THE LAW

OF

MASTER AND SERVANT.

PART I.—COMMON LAW.

PART II.—STATUTE LAW.

BY

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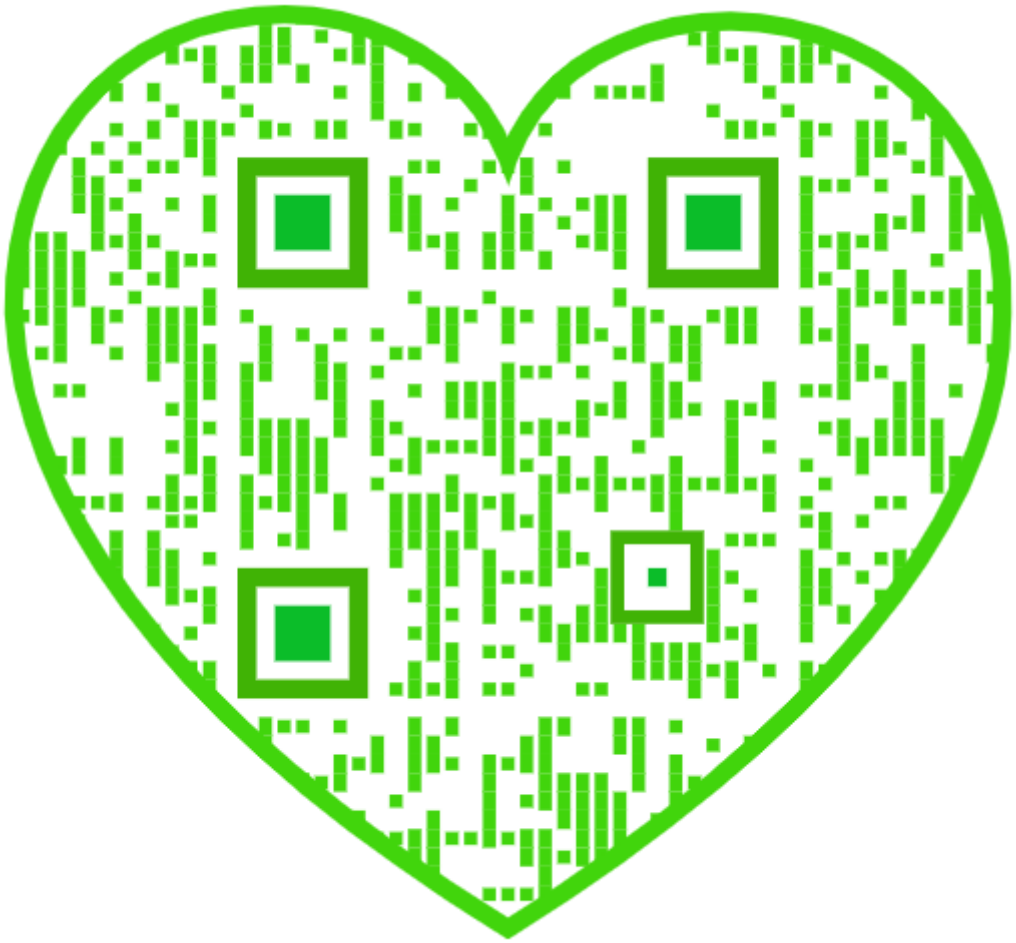

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TO

CHARLES RUSSELL, Q.C., M.P.,

This Book is Dedicated

WITH ADMIRATION AND RESPECT.

"NON IMMERITO REGNARE IN JUDICIIS DICTUS EST."

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PREFACE.

I HAVE sought to include in this book the chief recent decisions and Acts relating to Masters and Servants. The statutory and case law is of great bulk, and is rapidly increasing; and my chief desire has been to make it readily accessible. Though many of the statutes are of considerable length, they have, with few exceptions, been printed in full; no lawyer would care much for them in an abridged form. The dates are appended to the authorities; the opinion of many lawyers and my own experience lead me to believe that this may be useful. From several excellent works in English, Scotch, and American legal literature, I have received assistance; but I have deviated in some respects from the plans followed in them. The law of Master and Servant has been peculiarly affected by social changes. Much that was once of great consequence has become unimportant, if not obsolete, and I have been at pains to give prominence to the portions of the law which

now most concern the practical lawyer, the employer, and the workman, and to make the reader remember that the value of a decision or a dictum may depend not a little upon its age.

J. M.

4, Pump Court, Middle Temple.
December, 1882.

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ADDENDA.

Page 164. By Apportionment Act, 1870, 33 & 34 Vict. c. 35, s. 2, salaries are made apportionable.

,, 183. To authorities in note (*d*) add *Eaton* v. *Western*.

,, 184. *Eaton* v. *Western* is reported in L. R., 9 Q. B. D. p. 636. Speaking of *Royce* v. *Charlton*, Jessel, M.R., says: "I think that case was not rightly decided, and we decide the present case on the first point with the understanding that in effect it overrules *Royce* v. *Charlton*." Sir James Hannen observed: "There is a broad distinction between this case and that of an apprentice taken into the house. In the latter case, I am inclined to think that the master would be entitled to take the apprentice with him if he removed to another place, and that it would be beyond the power of the apprentice to refuse to go." The case also decides that there was no breach of the covenant to serve the firm, inasmuch as the firm was split up into two firms, one carrying on the manufacturing part of the business at Derby, and the other the repairing and agency part of the business in London. "The apprentice looked to the advantage of being educated in a firm carrying on the business in its entirety, and he is entitled to see the business of buying and selling as well as the mere manufacturing."

,, 193. See *Breen* v. *Cooper* (1869), 3 Ir. C. L. 62, as to special damage for dismissal.

,, 198. See *May* v. *Thomson*, L. R. 20 Ch. D. 705; 47 L. T., N. S. 295 as to specific performance of contract for sale of medical practice.

,, 223. In note (*d*) for "is not," read "is not often."

,, 227. *Coventry* v. *Windal* (1615), Brown. 67. A man cannot compel an apprentice (to a surgeon) to go beyond seas except he go with him, "but clearly he might send his apprentice to Chester, or any other part of England."

,, 231. See *Gunter* v. *Astor* (1819), 4 Moore 12, as to damages for enticing away servant.

,, 482. As to the meaning of "employed," see *Beadon* v. *Parrot* (1871), L. R. 6 Q. B. 718, where it was held that the respondent had committed the offence of employing a child within sections 6 & 7 of 30 & 31 Vict. c. 146, though the respondent had no interest in the proceeds of the sale of the child's work, and though the materials were supplied by the child's mother.

Page 545. *Saunders* v. *Crowford*, has been overruled by *Winyard* v. *Toogood*, W. N., Dec. 23, 1882, p. 187; Times, Dec. 20, 1882; Solicitor's Journal, Dec. 23, 1882.

,, 664. *McGiffin* v. *Palmer's Shipbuilding Co.* is reported in 47 L. T. N. S. 346, where Field, J., says the "defect" must be "something in the permanent condition" of the way.

,, 666. *Bunker* v. *Midland Rail. Co.*, Law Times, Dec. 16, 1882; Solicitors' Journal, Dec. 16, 1882 (plaintiff, a van guard, ordered by foreman to drive a van to B. market, and injured in so doing; plaintiff could not recover damages, inasmuch as the order was not, by the defendants' rules, one to which he was bound to conform).

,, 670. *Munday* v. *Thames Iron Works Co.* is reported in 47 L. T., N. S. 351. "The liability of employers is considerably increased, and if the Legislature had intended that workmen should have a double remedy, I think we should have found something in the Act to indicate it." —Manisty, J.

THE LAW OF

MASTER AND SERVANT.

INTRODUCTION.

THE relation of Master and Servant is created by contract. Their duties to, and rights against, each other arise out of contracts, express or implied. The only exceptions are duties and rights created by statute (*a*).

This is a statement of the law of Master and Servant as it is and as it has long been; and abundance of authority in support of these propositions will be found in this book. But labourers and workmen were not always free to make contracts with their masters. Services were not performed and exacted in virtue of any agreement. Traces of serfage are said to be still found in the law of Master and Servant. It may be well to preface the description of the law as it is with a short history of its growth.

Serfage or villenage is an early English institution; even slavery once existed in this country. The *ceorl* of early times—who corresponded to the *liten, leten, lazzen, aldien, aldionen* of old German society—was not exactly a

(*a*) See Austin's Jurisprudence, vol. i., p. 396, and vol. ii., p. 970, as to certain peculiarities of the Law of Master and Servant. Out of the relation grow not only rights *in personam*, but rights *in rem*.

slave. Nor was he in all respects a freeman; he had some of the qualities of both (*b*). His condition varied at different times; but it seems to have been always better than that of the slave or even of the villain as described by Bracton. His social rank was not fixed. He might purchase his freedom (*c*). He might acquire property and become a thane. He might possess slaves of his own, and he had rights over the common land of the township (*d*). Sometimes, at all events, he had the choice of a master; and the *wehrgeld* or blood money to be paid by one who killed him, did not differ very much from the fine paid by the slayer of a freeman (*e*). "The *ceorl*," says Mr. Freeman, "like the ancient Greek citizen, though he might be looked down upon by an aristocratic class, was actually a privileged person as compared with a large number of human beings in his own city or district" (*f*). But the *theows*, who were the other branch of the servile class before the Conquest, were really slaves. They were fixed to the soil, so that when it was sold they were sold also (*g*). They might be beaten and imprisoned by their masters; they were freely bought and sold; they had no *wehrgeld*, at all events none payable in the event of their being slain by their own masters (*h*), whose property they were; wrongs done to a *theow* were wrongs done to his owner. Though the sale of slaves abroad was prohibited, the prohibition was habitually

(*b*) Waitz's *Verfassungsgeschichte*, vol. i., p. 176. As to the *lat* and *ceorl*, see Green's History of the English People, vol. i. 11.

(*c*) Thorpe's *Diplomatarium Anglicum*, xviii.; Stubbs' Constitutional History, vol. i. 79. Kemble thinks that even the slaves could redeem themselves in later periods. The Saxons in England, vol. i. 212.

(*d*) Stubbs, vol. i. 81, 155, 162, ii. 453. The *ceorl* seems generally to have possessed land.

(*e*) Stubbs, vol. i. 161.

(*f*) Norman Conquest, i. 88.

(*g*) The subject is exceedingly obscure, and great differences between the authorities exist. See Stubbs' Constitutional History, vol. i. 78; Lappenberg, ii. 320; Gierke's *Genossenschaftsrecht*; Waitz's *Verfassungsgeschichte*, vol. i. 176; Von Maurer, *Geschichte der Fronhöfe*, i. 12. Compare with the distinction between *ceorls* and *theows* the account of certain slaves given by Tacitus in his Germania, c. 24 and 25.

(*h*) There is a difference of opinion on this point: Lappenberg, ii. 321; Cobb on Slavery, cxxiii.; and Kemble, i. 209.

broken. The Church manumitted many slaves, and strove to improve the lot of others; and evidence exists of the frequency with which wealthy landowners freed their bondmen *pro salute animarum*. Such laws as Ælfred's, which declared that, if any one should in future buy a Christian slave, the time of his servitude should be limited to six years, may have diminished the number of slaves in England (*i*). But the institution itself survived; and the laws of Æthelstan and Ædmund bearing upon slavery are singularly harsh and cruel. Before and, indeed, after the Conquest, English slaves were much in demand in Ireland. Bristol was a favourite mart to which Danes, and especially Irish, resorted in order to purchase young Englishmen and Englishwomen (*k*). Famine often drove freemen to sell themselves and their children into captivity; they "sold their heads for meat in the evil days" (*l*). Men became slaves because they had committed grave crimes, and were unable to pay the *wehrgeld* due to those whom they had wronged. Slavery was sometimes the penalty paid by fugitives who availed themselves of the right of asylum; and the never-ending succession of wars between Danes, Mercians, and West Saxons, helped to recruit the servile class. According to Domesday Book there were about 25,000 *servi* or *theows*, and 108,000 *villani* or *ceorls* at the time when the Survey was made (*m*).

In Domesday many varieties of bondmen (*n*) are mentioned;

(*i*) Stevenson's preface to *Chronicon Monasterii de Abingdon*, 2, li. and lxi.

(*k*) Seyer's Memoires of Bristol, vol. i. 319. Eden in his History of the Poor, i. 10, mentions a law passed in 1102, prohibiting the sale of men in market, "which hitherto hath been the common custom in England." See the laws of William the Conqueror in Thorpe's Collection.

(*l*) *Homo xiii. annorum sese potest servum facere.* Theod. Pœnit. xix. s. 29, quoted in Stevenson's preface, li. See also Kemble, vol. i. 197; Stubbs, vol. i. 78.

(*m*) Turner, iii., 256, estimates the total population before the Conquest at 2,000,000.

(*n*) Mention is made among other classes of *villani integri* and *villani dimidii*. Sir Henry Ellis's introduction to Domesday. The latter phrase is sometimes translated villains in gross—a term which does not, so far as I know, occur in Bracton, Fleta, Britton, or the Mirror. The distinction clearly drawn in Littleton between villains in gross and villains regardant, does not seem to have been closely adhered to in practice. See Boldon Book, Surtees Society, Appendix, lxx. and Stubbs,

for example, *servi, cotarii* (*o*), *bordarii, villani*, &c. Some of these names disappear soon after the Conquest (*p*), and others take their place. The exact nature of the changes after that event in the lot of the servile and semi-servile classes is very obscure. The writers who composed treatises on English law in the reigns of Henry III. and Edward I. throw scanty light upon the history of villenage during the previous century. It is often impossible to say whether they describe society as it then was, or whether they are drawing upon their knowledge of the Civil Law, and attempting to mould facts to suit their own theories. *Servus, villanus, nativus,* and *rusticus* are often used loosely and apparently indifferently to denote the English serf. Early text-writers, echoing the language of the Institutes, emphatically state that among those not free there is no distinction of condition (*q*). Fleta and Bracton ignore most of the varieties of serfage mentioned in Domesday; they confound villenage with slavery; and they copy the commonplaces of Roman jurists as to the nature and origin of the latter. The probability is that even before the Conquest the lot of the *ceorls* had deteriorated; that after the Conquest, in consequence of contact and familiarity with serfage as it existed on the Continent, the two great divisions of men not free were brought nearer to each other; that the lot of the *theow* was improved, while that of the *ceorl* was lowered; and that, while slavery tended to disappear, serfage became harsher than it had been (*r*). The remarks

vol. iii. 604. See *Chronicon de Melsa*, vol. iii., lxi. for case of a *nativus* being granted without land; also Whitaker's History of Whalley, i. 175.

(*o*) As to this term, see the introduction to *Historia et Cartularium of Gloucester*, vol. iii. c. 7, and also Hale's Introduction to Register of Worcester Priory, xlvi.

(*p*) It is pointed out by Dean Hale that while the Exchequer Survey of 1086 mentions four classes of tenants of the manors of S. Paul's, the Domesday of 1222 preserves only one of these names. Domesday Book of S. Paul's, xxvi. Von Maurer (*Geschichte der Fronhöfe*, ii. 3), notices a similar change in the description of the servile classes in Germany.

(*q*) Bracton, Lib. I., c. 6; Cowell's Institutions, 9. As to the supposed relation of the *villani* to the Roman *coloni*, see Savigny's Essay, Turner, vol. ii., and Puchta's *Institutionen*, ii. s. 214. In the laws of Ina the expressions *villanus* and *colonus* are used as interchangeable, s. 19.

(*r*) See Dialog. de Scacc. as to

of Glanville (Chief Justiciary in 1180) with respect to villenage are singularly meagre. So far as they differ from the accounts of later writers, they show the lot of the villain to a disadvantage. Glanville mentions few modes of emancipation. According to him, even the lords could not invest their villains with complete freedom (*s*); though emancipated, a serf might be objected to as a witness. In Glanville's time the rule was recognised that, if a fugitive villain lived away from his lord and master for a year and a day in a privileged town, and were received into a guild as a citizen, he was freed (*t*). The status of children was governed by the rule of the Civil Law, according to which the status of the mother determined that of the child. The son of a freeman and a bondwoman became a villain. If a freeman married a bondwoman, he lost his privileges and remained, so long as the union lasted, in the position of a villain (*u*). Bracton, who wrote about 1259, describes villenage at considerable length, and paints the legal condition of the serf as miserable. He was liable to uncertain burthens; he did not know in the evening what he should have to do in the morning; the lord might seize even the implements of husbandry (*x*); and whatever

power of distraining on goods of villains for debts due from the masters. Stubbs' Select Charters, 160. Freeman's Norman Conquest, vol. v. p. 476, and Stubbs, vol. i. 428. Dean Hale in his Introduction to St. Paul's Domesday, p. xxxi., adduces reasons, by comparing the *Rectitudines singularum personarum* (placed in order of time between the laws of Cnut and Edward the Confessor) with the Exchequer Domesday and the records of the manors of St. Paul's, for thinking that the relations between the owners of the soil and manorial tenants remained almost unchanged for centuries.

(*s*) Lib. 5, c.5. "The effect of manumission was simply to relieve the slave from the bondage of the master. It did not place him upon the footing of a free citizen." To be made free needed the act of the whole body. Cobb on Slavery, cxxvi., and Kemble, i. 218.

(*t*) A similar provision is found in the laws of William the Conqueror; see, however, Mr. Stubbs' preface to Hoveden's Chronicles, 2, xxxviii. where grounds for doubting the genuineness of the provision are shown. Von Maurer (*Städtverfassung*, i. 132, and 395) shows that the rule existed in many German cities. It is curious to find this provision in force in towns so remote as Berne and Newcastle-upon-Tyne.

(*u*) In the laws of Henry II., we read *Semper a patre non a matre generationis ordo texitur*. Cowell, who wrote in the reign of James I., says, *Hodie tamen soboles quæ per liberum ex nativa in matrimonio suscitatur libera est*.

(*x*) Compare Magna Charta, art. 9. In the Mirror, ii. 28, which is usually

he earned became the property of the master. In Bracton's treatise, however, signs are not wanting that the actual lot of the villain was better than the theory of the law would imply. The subject of donations to serfs, the circumstances in which lords lost their rights, and many possible modes of emancipation are discussed; and the fact that the life and limbs of the serf were under royal protection is recognised. In the treatise by Britton, who wrote about the end of the thirteenth or beginning of the fourteenth century, other traces of improvement are visible. The "exception of villenage" holds good only between the lord and villain, and that, too, only when the former has been in recent possession of the latter. "Whoever," says Britton, "kills his villain shall bear the same judgment as if he had killed a freeman (*y*)." The rule of descent is not identical with that of the Roman law; a child is free or not according to the condition of the father (*z*). The fact that Britton mentions many more modes of emancipation than Glanville is not without significance. Whatever may have been the lot of villains immediately after the Conquest, the harsh theory of the law soon ceased to correspond with their actual condition. It no doubt varied in each manor; it would greatly depend on the seneschal, the bailiff, and the præpositus who directed the labours of the servile tenants. The obligation to give *thac et thol, auxilium et merchet, et in obitu melius catallum* might be made an instrument of oppression. But when we read of villains in the fourteenth century employing labourers of their own (*a*), and when we are told of a serf who made a grant of a considerable area of land (*b*), we see how far removed a bondman might be from his condition as described by Bracton. If the services exacted were hard, they had become for the most part fixed. They were generally

assigned to the reign of Edward II., the distinction between slaves and villains is clearly drawn.

(*y*) 1. c. 32.

(*z*) *Ibid.*

(*a*) Bond's Introduction to *Chronicon de Melsa*, 3 L. ii.

(*b*) See Pearson's England, vol. i. 595.

commutable for money payments; and often they were but equal to a moderate fixed rent. If the villains were subject to many restrictions, so were free labourers and craftsmen of the towns, who must obey the ordinances of their guilds, and who were by no means at liberty to practise their trades as they thought fit. "Anything like the extreme theory of villenage," says Professor Rogers, "was, I am convinced, extinct before the close of the thirteenth century" (*c*).

Why villenage disappeared so quickly, and, on the whole, so silently as it did is an historical problem which is but partly solved. Economical and political causes exercised much influence. Services were loosely exacted when they were worth little, and payment in money was preferred by nobles who lived at court, or were engaged in wars in France or elsewhere (*d*). In the years of confusion and turmoil due to the Wars of the Roses, a multitude of villains escaped from thraldom, and others were emancipated in order that they might become soldiers. The law itself in many ways favoured liberty. The cases in the Year Books show that the number of runaways was great, and that lords might easily lose their rights by inadvertence. It was not necessary that they should formally manumit their serfs by putting into their hands swords and lances, the weapons of freemen, or enfranchise them by deed; the Courts were

(*c*) History of Prices, vol. i. 70. Of course sales of land with the villains appended took place subsequent to this. In his preface to the Hoveden Chronicles, vol. ii., xl., Professor Stubbs draws attention to the common exaggerations with respect to the lot of the villains, and remarks that their condition "up to the reign of Edward III. was one as full of immunity as of service." "I believe that as the knowledge of the civil and continental systems increased among our lawyers, the hardships of villenage increased too, and the definiteness of the theory; until after the troubles of the fourteenth century they threatened a social revolution." See also Mr. Toulmin Smith's English Guilds, p. 136; and as to the part which villains took in local affairs the remarks of the same author in his work on the Parish, 474. The jury which made the assessment for the property tax imposed in 1198, might be partly composed of villains. There must, however, have been a great difference in the lot of bondmen in different manors. Those in Durham seem to have given half the year to the service of the Bishop. Boldon Book, Surtees Society, Appendix, lxxi.

(*d*) History of Prices, vol. i. 81.

ingenious in finding constructive manumissions. From early times there existed the important rule, which has already been mentioned, that if a villain escaped to a privileged city or royal demesne and dwelt there without let or hindrance for a year and a day, he could not be seized by his master (*e*). If a bondman served seven years as an apprentice, the fact was proof of his freedom; the lord's writ *de nativo habendo*—the writ which commanded the sheriff to seize a fugitive villain—was barred. If a serf were enfeoffed of any tenement; if he were acknowledged by his lord in a Court of record to be free; if he could prove that his master had permitted him to be on a jury; if he had brought an action against his lord, or joined with him in suing; if a lord had entered into a contract with his serf—and the readiness with which money rents were accepted in exchange for labour services made this a frequent occurrence (*f*)—there was an implied manumission, and the villain became free (*g*). The circumstance that the same labour rent had to be collected from an increasing number of persons may have often helped to destroy this institution (*h*). But a stronger influence in favour of freedom was a peculiarity of the law upon which all the books insist. Freedom depended not on the nature of a man's tenure, but on the quality of his stock or blood. Many freemen held land on a servile tenure; the tenement, as Bracton observes, "neither confers nor detracts from the status of a person" (*i*). Besides the serf proper, there was the *liber homo tenens in villenagio*. A lord who sought to reclaim a runaway had to prove that the ancestors of the man whom he claimed had done service, and it was enough for a fugitive to break one link in the chain and prove that some

(*c*) Glanville, 6. As to the great influence of this in promoting freedom in Germany, see Von Maurer, i. 382.

(*f*) Hale's Introduction to Domesday of St. Paul's, lvi., also Mirror, c. 27. Pilgrimages afforded frequent opportunities of escape, 3 Reeves, 172.

(*g*) Cowell (*Institutiones*, p. 13), broadly states the rule thus:—"*Aut denique aliquid simili illi fecerit quod homines non nisi liberis facere solent.*"

(*h*) Domesday of St. Paul's, xxii.

(*i*) Book ii., c. 8, also i. c. 6. Mr. Pollock on Early English Land Law, Law Magazine, May, 1882.

remote ancestor had been free. Multitudes probably escaped from thraldom in consequence of the adherence of the Courts to the principle that time did not run against freedom, and that villenage depended not on tenure, but on descent.

In the time of Edward III., serfdom was distinctly breaking up. A statute passed in the twenty-fifth year of his reign bears testimony to the difficulty experienced by masters in recovering their runaway serfs. When a writ *de nativo habendo* was sued out by a lord with a view to recover a fugitive, the latter might sue out a writ *de libertate probanda* (*k*). The case was then transmitted from the County or Sheriff's Court to the Justices in Eyre or the King's Bench, and the villain was protected in the meantime from seizure. In the interest of the masters the law was altered in 1350 ; and a power of seizing a fugitive serf was given to a master even when a writ *de libertate probanda* had been purchased (*l*). A succession of pestilences, culminating in the Great Plague of 1349, which swept over Europe and destroyed about half the population of England, affected in an important way both the serfs and the free labourers who had much increased. Labour became scarce ; wages rose, first among reapers and shepherds, and later generally ; vagrancy increased. There was every temptation for bondmen to break away from their thraldom, and for masters to tighten their hold upon their own serfs, and to take fugitives into their service. To arrest the natural rise of wages and to prevent the migration of the labouring classes from place to place—in other words, to restore the substance of villenage, which, it was plain, was fast disappearing—the King and his Council issued in 1349 an ordinance compelling every person able in body and under the age of sixty "not living by merchandise, nor exercising any craft, not having of his own wherewith to live, nor land about whose tillage he might

(*k*) Pike's History of Crime, i. 487. (*l*) Fitzherbert, 77.

employ himself, nor serving any other," to serve at the wages customary six years before the famine. Refusal to enter into service, or departure before the end of the term agreed upon, was to be punished with imprisonment. The ordinance seems, to judge from the complaints of the Commons, to have been inoperative ; and Parliament passed in the following year the first (*m*) of a series of statutes, by which it sought to regulate the rate of wages, and to take away the new power of the labourers. Servants were enjoined to be content with the liveries and wages which they had received in the twentieth year of the king's reign. They were to be hired by the year or other usual time, and not by the day. A servant was not to go out of the town where he dwelt in the winter to serve in another town in the summer, if he could get employment in the former. Artisans not specially mentioned in the Act were required to take oaths that they would practise their crafts as they had been wont to do in the twentieth year of the king's reign. If servants escaped from one county to another, it was the duty of the sheriff to seize them. Throughout the reign of Edward III. this struggle continued. Manumissions were cancelled, and persons who had believed themselves to be free were reduced to bondage (*n*). Fugitive labourers might be outlawed, and "in token of falsity" the letter F might be burnt on their foreheads (*o*). Alliances or confederations of workmen were broken up (*p*) ; handicraftsmen were enjoined to practise only one mystery (*q*) ; and to preserve the distinction of classes, apparel was regulated by statute (*r*). There was

(*m*) 25 Ed. III., st. 1. See Brentano's account in preface to Mr. Toulmin Smith's English Guilds of the motives actuating Parliament. The contemporary evidence of Finchden, J., (40 Ed. III., p. 39) is preferable. "The statute was made for the advantage of the Lords that they should not be in want of servants." For enumeration of the laws regulating wages, see Eden's History of the Poor, i. 43.

(*n*) Green's History of the English People, 242.

(*o*) 34 Ed. III., c. 10.

(*p*) 34 Ed. III., c. 9.

(*q*) 37 Ed. III., c. 6. To promote the execution of the laws, Parliament (36 Ed. III. c. 14), declared that the fines imposed under the Statute of Labourers should not go to the Royal Exchequer but be distributed among the Commons.

(*r*) 37 Ed. III., c. 8-14.

an attempt to reduce agricultural labourers, and artisans engaged in trades useful to agriculture to a state of villenage. The villains resisted. Frequent mention is made of isolated revolts. The story told in the *Chronicon Monasterii de Melsa* of the litigation protracted for years between the abbot and serfs of that monastery, and carried from Court to Court with varying success and with obstinacy on either side, is an instance of the perseverance of the villains in contending against their masters (*s*). We find in the preamble to the 1 Richard II. c. 6 (1377) evidence that they had powerful aiders and abettors in the struggle. "The villains," says Mr. Stubbs, "ignored the statute (of labourers), and the landlords fell back on their demesne rights over the villains. The old rolls were searched, the pedigree of the labourer was tested like the pedigree of a peer, and there was a dread of worse things to come" (*t*). The imposing of a poll tax, which was vexatiously collected, gave occasion to the peasants' revolt of 1381. The hardships of villenage were not their only grievances, and in fact the strength of the movement was in Kent, where the villains had always held a better position than elsewhere (*u*). But the chief demand of the insurgents was the abolition of bondage. After about a fortnight of success the outbreak was quelled. The charters of manumission granted by the king to the peasants when in London were cancelled, and many of the leaders were put to death. But in spite of the failure of the insurrection—in spite of the vow of the king "You were and are rustics, and shall remain in bondage; not that of old, but in one infinitely worse"—the work of enfranchisement went on. The efforts made to prevent it were numerous but ineffectual. In 1388 a strict system of passports was established (*x*). A servant or labourer who left the hundred, rape, or wapen-

(*s*) iii. 129.

(*t*) Constitutional History, ii. 455. See also Pike's History of Crime, i. 330.

(*u*) The statement, often broadly made, that there were no serfs in Kent, is not quite correct. Furley's History of the Weald of Kent; Elton's Tenures of Kent, 38; and Lappenberg, ii. 321. See, however, Fitzherbert, 46.

(*x*) 12 Rich. II. c. 3.

take in which he dwelt must carry "a letter patent containing the cause of his going and the time, if he is to return," on pain of being put in the stocks. The Commons petitioned in 1391 that the sons of villains should not be allowed to frequent the universities; and from time to time the Legislature interposed with various measures to prevent the rural population from apprenticing their children to trades in cities and boroughs, and so reducing the number of husbandmen (*y*). Labourers were bound to take an oath annually at the leet to observe the laws relating to wages and service (7 Hen. IV. c. 17 (1405)). The free labourers could not bargain as to their hire; if they were not bound to take the old rates, they must accept the wages which the Justices proclaimed at Easter and Michaelmas (*z*). Meanwhile villenage had all but died out. It is a significant fact that the rebels who were led by Jack Cade in 1450 did not complain of the exactions of their lords; in the interval of sixty-nine years between this popular rising and the earlier peasants' revolt, the institution had lost its importance. Sir Thomas Smith, who wrote in the reign of Edward VI., says that he had never known a villain in gross; and villains regardant had apparently been almost entirely merged in copyholders (*a*). Yet villenage existed in the reign of Elizabeth. This is shown by the case of *Butler* v. *Crouch*, in Dyer's Reports, (*b*) which decided that a villain and his issue not having been claimed for sixty years could not be seized by the lord, and also by the fact that in 1574 Elizabeth issued a commission to compound with her bondmen in Cornwall for their manumission. The last case of villenage recorded in the law books is an action of trespass, *Pigg* v. *Caley*, in which a plea of villenage was set up (*c*).

(*y*) 7 Hen. IV., c. 17. See as to exemptions enjoyed by London and Norwich, 8 Hen. VI., c. 11; 11 Hen. VII., c. 11; 12 Hen. VII., c. 1. See 9 Richard II. c. 2, as to villains flying into cities and suing their lords.

(*z*) 13 Rich. II., c. 8. This Act did away with the rate of wages as fixed by statute of Ed. III.

(*a*) Commonwealth, b. 2, c. 10. See Scriven on Copyhold Tenure, p. 46, 3rd ed., as to origin of copyholders.

(*b*) 266a.

(*c*) Noy's Reports (1618), 27.

Centuries before this, a large class of free artisans, craftsmen, and labourers had sprung up, especially in towns. Though nominally free, they did not in fact buy or contract as each thought fit. They were for most part members of guilds or trade companies, by the rules and ordinances of which they were bound. The principle of the Common Law was that each man was free to trade as he thought fit (*d*); that he might bind himself apprentice as he liked; that he might practise his trade anywhere, even if he had not been apprenticed to it—a principle often invoked against guilds or corporations which made ordinances creating monopolies (*e*). Nevertheless the guilds obtained enormous power. In London, for example, no one could be a freeman of the city until he was free of one of those fraternities, and only freemen might trade within the city or its liberties (*f*). Originally not incorporated, but mere voluntary associations, these guilds received grants of incorporation, and acquired a distinct political and legal existence. They made bye-laws regulating the use of tools, the quality of wares, the settlement of disputes, the hours of work and the number of servants or apprentices whom a master might employ. They rigorously enforced the rule that no artificers who were not free might be employed within the city. Parliament occasionally interposed to lighten the burden of monopolies which were, as the statutes said, "against the common profit of the people," (*g*) and the validity of such bye-laws was sometimes questioned with success in Courts of law. A series of deci-

(*d*) Case of *Tailors of Ipswich* (1615), 11 Reports, 55; Bacon's Abridg., v. 353. Kyd on Corporations, i. 125. The principle was not adhered to very rigorously; see 2 Rol. Rep. 392.

(*e*) As to these guilds, see Report of Municipal Commissioners of 1835; Mr. Black's History of the Leathersellers' Company; Brand's History of Newcastle. Contrast Mr. Froude's roseate account of the guilds (History of Eng., vol. i. 48), with Wicklif's attack upon them, vol. iii. p. 333, of English Works.

(*f*) Pulling on the Customs of London, 62, 66, referring to *Wannel's Case* (1739), 1 Str. 675. Compare the clause in the charter of Hereford, "We have granted that no one who is not of the guild shall buy or sell in the city or its suburbs without the consent of the citizens." Pike's History of Crime, i. 184, 378.

(*g*) 15 Hen. VI., c. 5, and 19 Hen.

sions, extending from the time of Elizabeth to the end of last century, bears testimony to the efforts made to upset bye-laws excluding from the practice of their trade persons who had not been apprenticed in a certain town or were not free of a particular city (*h*). The validity of such ordinances, when founded on prescription or custom, was recognised (*i*). This condition could generally be shown to exist, and hence in most towns "foreigners," that is to say all Englishmen not belonging to particular towns, were prevented practising their art or trade. This state of things was not entirely destroyed until the Municipal Corporation Act of 1835 was passed (*k*).

Here may be mentioned one of the momentous events in the history of legislation with respect to labourers—the passing of the 5 Eliz., c. 4; a statute which repealed all the former laws on the subject, and which for some centuries formed the principal part of the English law of master and servant. The circumstances in which the Act was passed are thus described by the Royal Commissioners who reported upon the working of the Masters and Servants' Act of 1867 (*l*).

"In the meantime a great social evil had arisen, with which it was necessary that the Legislature should grapple, and which it sought to overcome by imposing rigorous restraints on the freedom of labour. The great social revolution caused by the suppression of the monasteries,

VII. c. 7; 3 Hen. VII. c. 9; 12 Hen. VII. c. 6, and 19 Hen. VII. c. 7. See Hallam's Constitutional History, vol. i. 355 and 486, as to the debates on monopolies in the reigns of Elizabeth and James I.

(*h*) *Davenant* v. *Hurdis* (1599), Moore, 576; *City of London Case* (1609), 8 Rep. 121 b.; *Tailors of Ipswich* (1615), 11 Rep. 53; *Hesketh* v. *Braddock* (1766), 3 Bur. 1846. See also, Kyd on Corporations, i. 131. These monopolies seem to have been relaxed when fairs were going on.

(*i*) Almost all the authorities are collected in Kyd on Corporations, vol. i. 131-156. *City of London Case* (1609), 8 Rep. 121 b.; *Warden, &c., of Weavers* v. *Brown* (1609), Cro. Eliz., 803; *Rex* v. *Harrison* (1762), 3 Bur. 1323, and 1 Bl. W. 372; *Woolley* v. *Idle* (1766), 4 Bur. 1952; *Hesketh* v. *Braddock* (1776), 3 Bur. 1846; *Mayor of York* v. *Welbank* (1821), 4 B. & Ald. 438; *Graves* v. *Colby* (1838), 9 A. & E. 369.

(*k*) 5 & 6 Will. IV. c. 76, s. 14.

(*l*) Second and final Report, p. 13. For some excellent remarks on the difference between the two Statutes of Labourers, see Pike's History of Crime, ii. 78.

and by the consequent withdrawal of the support which those institutions afforded to the indigent, and too often to the idle, had led to the dispersion of a multitude of people over the face of the country for the purpose of begging, under the pretence of which many persons of strength and capacity to labour, but preferring a life of vagrancy and idleness to earning their livelihood by industry, too often superadded depredation and robbery. Under these circumstances Parliament set to work to suppress vagrancy by compelling every one wandering without employment to return to their former place of abode, to be there relieved if unable to earn their living by labour, but if capable of labour there to obtain employment. Above all, the strong and ablebodied vagrant, known in the language of the time as the 'sturdy' or 'valiant beggar,' was to be dealt with with a strong hand and restrained by merciless severity. The primary object of this legislation being to suppress vagrancy, it was thought that the best mode of effecting the purpose was to localise poverty with reference to relief, and labour with reference to employment, in the parish or district to which each individual belonged, or, as it was called, the place of his settlement, which was taken to be the place where he was born, or had last resided for a certain period. The misery and want occasioned by the sudden withdrawal of the assistance to the poor, previously supplied by the bounty of the monastic institutions, could not but be sensibly felt, and a sense of a duty of preventing the needy, aged, and infirm, from perishing from want appears to have been awakened. As yet, indeed, the idea of taxing the wealthier portion of the community for the maintenance of the poor—afterwards embodied in the statute of the 43rd of Elizabeth—had not occurred to the Legislature ; but Statutes were passed calling upon those in authority to endeavour to induce persons having sufficient means to contribute to a common fund, for the relief of the impotent, and the employment of the ablebodied. To the latter, if he refused to accept employment and to labour honestly, no mercy was to be shewn ; the scourge and prison were the alternative of labour. And, while employment was thus to be found at their place of their settlement, for those who had no other means of living, all wandering in search of employment was rigorously interdicted and punishable as vagrancy. Such, under a succession of harsh and cruel Statutes, passed in the reigns of Henry VIII., Edward VI., and Queen Elizabeth, continued to be the law to the commencement of the last century."

The statute of Elizabeth admitted the imperfections and failure of previous Acts controlling wages, and stated that they could not be carried into effect without the great grief and burden of the poor labourers and hired men.

Nevertheless, the Legislature proceeded to regulate the relations of master and servant in their minutest details.

The statute mentions the various sorts of artificers then known, and provides that every person brought up in any of the said arts, crafts, or sciences, or who has exercised any of them for three years, unless he has an estate of the clear yearly value of forty shillings, or has goods of his own to the clear yearly value of ten pounds, or is retained with any person in husbandry, or in any art or science, or lawfully retained in the household, or in any office, with any nobleman, gentleman, and others, or unless he has a farm or holding in tillage whereupon he may employ his labour, shall, if required by any person using the art or mystery wherein he has been exercised, be retained, and shall not refuse to serve under the penalty of imprisonment. Section 5 enacts that "no person which shall retain any servant shall put away his or her servant, and that no person retained according to this statute shall depart from his master, mistress, or dame before the end of his or her term, upon the pain hereafter mentioned, unless it be for some reasonable and sufficient cause or matter, to be allowed before two justices of peace, or one at the least within the said county, or before the mayor or other chief officer of the city, borough or town corporate wherein the said master, mistress, or dame inhabiteth, to whom any of the parties grieved shall complain; which said justices or justice, mayor, or chief officer shall have and take upon them or him the hearing and ordering of the matter betwixt the said master or mistress, or dame and servant, according to the equity of the cause." Section 6 provides for one quarter's warning or notice. Section 7 compels all persons between the ages of twelve and sixty, except certain classes, to serve in husbandry. Section 8 enacts that "if any person after he hath retained any servant, shall put away the same servant before the end of his term, unless it be for some reasonable and sufficient cause to be allowed as is aforesaid; or if any such master, mistress, or dame shall put away any such servant at the end of his term, without one quarter's warning given

before the said end, as is above remembered, that then every such master, mistress, or dame so offending," &c., shall forfeit the sum of 40*s*. A servant who departed from his master before the end of his term might be committed to prison (section 9). No servant within the statute might go from one city, town, or parish to another, unless he first got a testimonial or licence to depart (section 10). The hours of work were fixed (section 12); and the justices were empowered to assess at the Easter Sessions the rates of wages (section 15). To give or to take wages in excess of those proclaimed was an offence punishable by imprisonment. Even more important was the section which declared that "it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use or exercise any craft, mystery or occupation now used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years at the least as an apprentice, in manner and form abovesaid." To refuse to be an apprentice and to serve in husbandry was an offence for which the offender might be committed to prison (section 35). To the justices of the peace and mayors was assigned the duty of hearing and determining offences against the statute.

One indirect effect of this legislation was to prevent labourers moving freely to and fro in search of employment. This had also been the purpose of previous laws as far back as the 23rd of Edward III. The 12 Richard II. c. 7 (1388), laid the foundation of a settlement law (*m*), for it ordained that beggars should abide in the cities and towns where they were dwelling at the time of the proclamation of the statute; if the people could not maintain them, they were to go to the towns where they were born, within forty days after the proclamation, and there abide during their lives. Other statutes with a similar object, but of still greater severity, were

(*m*) The law of domicile before this, as is shown by Mr. Coode in his Report on Law of Settlement and Removal (Parliamentary Papers, 1851), p. 7, restricted locomotion.

enacted during the reigns of Henry VII. and Henry VIII. (*n*). The most remarkable of these was a statute passed in 1547. It empowered the justices to cause a runaway servant to be branded with a hot iron, and to be adjudged a "slave." This extraordinary statute—apparently a deliberate attempt to reintroduce slavery—was repealed in 1549. The 39 Elizabeth, c. 17, and 43 Elizabeth, c. 2, made provision for the removal of vagrants to the place of their birth or last legal settlement. Then came various acts of the time of Charles II., William and Mary, and Anne (*o*). Thus was created a settlement system which lasted with few modifications from 1601 to 1834, and which helped to tie the labouring poor to their birth-places, no matter how little their services might be there in demand. To clench this policy, laws were passed to prevent English workmen going abroad; and as late as 1766 they were put in force (see State Papers, Domestic Series, 1766—1769, xxxvi.).

The Statute of Labourers of Elizabeth gave justices power to "limit, rate, and appoint" the wages of artificers. The justices claimed jurisdiction to order payment of wages (*p*); and the provisions of the statute were extended by the Legislature (*q*). By the beginning of last century justices had ceased to assess wages regularly. About this time they received a new kind of power from Parliament. From the reign of George II. to that of George IV. a series of statutes was passed with the object of giving the justices authority to settle disputes and difficulties between masters and workmen. The first of these was the 20 Geo. II. c. 19. It gave summary jurisdiction to the justices in disputes between masters and servants. "All complaints, differences,

(*n*) Reeves' History of English Law, iii. 602.

(*o*) Of the chief of these Acts (14 Chas. II., c. 12, 1662), Mr. Coode says, that it "destroyed the right of locomotion and free choice of domicile of the entire English people, excepting only the comparatively small number who could hire a tenement of the yearly value of ten pounds." See also the 5th of Geo. I., c. 27, and 23 Geo. II., c. 13, intended to prevent enticing abroad of artificers.

(*p*) *The King* v. *Pope* (1699); 5 Mod. 419; *Rex* v. *Gouch* (1701); 2 Salk. 441.

(*q*) 2 James I., c. 6.

and disputes," says section 1, "which shall happen or arise between masters or mistresses, and servants in husbandry, who shall be hired for one year or longer, or which shall happen or arise between masters or mistresses, and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters and other labourers employed for any certain time, or in any other manner, shall be heard and determined by one or more justice or justices of the peace of the county, riding, city, liberty, town corporate or place, where such master or mistress shall inhabit." The justices might make such order for payment of so much wages as seemed just and reasonable, provided that the sum did not exceed ten pounds in the case of any servant, and five pounds in case of an artificer or labourer. Section 2 states "that it shall and may be lawful for such justice or justices upon application or complaint made upon oath, by any master, mistress, or employer," "touching or concerning any misdemeanour, miscarriage, or ill behaviour in such his or her service or employment, to hear, examine and determine the same; and to punish the offender by commitment to the House of Correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by abating some part of his or her wages, or by discharging such servant, &c." Provision was also made for hearing the servant's application or complaint against his master, "touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment," and the justices were empowered to discharge the servant if matter of complaint were proved. The Court held that "there to be corrected" meant corrected by whipping (*r*). This statute was extended by 31 Geo. II. c. 11, to servants in husbandry hired for less than a year, and by the 4 Geo. IV. c. 34 and 10 Geo. IV. c. 52, to persons engaged in manufactures. Section 3 of the former enacted that if any servant in husbandry, &c., "shall contract with any person to serve

(*r*) *Rex* v. *Hoseason* (1811), 14 East, 605.

him, &c., and shall not enter into or commence his service according to his or her contract (such contract being in writing, and signed by the contracting parties), or having entered into such service shall absent himself from his or her service before the term of his or her contract shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanour in the execution thereof," any justice might issue his warrant for the apprehension of the servant. Such a servant might be sent to the House of Correction for three months; his wages might be abated; or he might be discharged. In *Turner's Case* (*s*), the Court of Queen's Bench decided that though the words "lawful excuse" were not in the statute, it was to be read as if they were, and that the offence contemplated by it was absenting from service "without lawful excuse." A servant might be punished under this statute more than once if he persisted in absenting himself. In *Ex parte Baker* (*t*), and *Unwin* v. *Clarke* (*u*) the Court of Queen's Bench held that, as the contract was still in force, he might be punished for a fresh breach of it, and in the latter case it was also decided that *bonâ fide* belief by the servant that he could not be compelled to return was not "a lawful excuse."

A new departure in legislation with respect to differences between workmen and employers took place in 1867. A Select Committee of the House of Commons having reported the year before that the law relating to masters and servants was objectionable in several respects, the 30 & 31 Vict., c. 141, was passed. The magistrate by whom disputes between employers and employed were heard might order an abatement of the whole or part of the wages, direct that the contract be fulfilled, annul the contract, assess the amount of compensation, or impose a fine in case of simple breaches of contract. Imprisonment might be inflicted as a consequence of disobedience to the orders of

(*s*) (1846), 9 Q. B. 80.
(*t*) (1857), 7 E. & B. 697; 26 L. J. M. C., 193.
(*u*) (1866), L. R., 1 Q. B 417; see, however, *Ex parte Baker* (1857), 26 L. J. M. C. 153, 2 H. & N. 219;

the Court. In cases, however, of breaches of "an aggravated character," the offender might at once be committed to prison with or without hard labour. This statute has been repealed by the Employers' and Workmen Act of 1875 (38 & 39 Vict., c. 90), the text of which will be found in the second part of this volume. For the first time the Legislature in this Act ceased to regard a breach of contract of hiring and service as an offence punishable by imprisonment.

This sketch ought not to close without further reference to the 5 Eliz., c. 4, the corner stone of the labour laws of England. In last century that Act ceased to be rigorously applied. It was, however, still unrepealed. Any single man between twelve and sixty, any married man under thirty, any woman between twelve and forty, not having any visible livelihood, might be compelled to go out to service "for the promotion of honest industry." The regulations of the 5 Elizabeth with respect to service in husbandry, the necessity of a labourer procuring a testimonial before quitting his parish, the hours of work, and the powers of justices to settle the rates of wages were still part of the law of the land. But the justices ceased to settle wages; and they were not compelled to do so. Both masters and servants disregarded the law as to testimonials (see complaints as to this in "Laws Concerning Masters and Servants," published in 1767, p. 233). The Courts, too, had shown no favour towards the Act. They had early confined its application, so far as regards apprenticeship to trades, which had existed at the passing of the Act, and which required skill for their exercise (*x*). Economists condemned its operation; judges from the bench questioned its policy (*y*); and the Legislature

and *R.* v. *Youle* (1861), 30 L. J. M. C. 234; 6 H. & N. 753.

(*x*) (1613) 2 Bul. 186. The distinctions were curious. Thus barbers were within the statute, Chitty on Apprentices, 117; Viner's Abridg., Trade A. Coachmakers, on the other hand, were not, because coaches were not introduced until about 1580, 2 Camp. 397: see also 1 Bur. 2, and 4 Bur. 2450; and Adam Smith's Wealth of Nations, Book i. c. x.

(*y*) Lord Mansfield, in *Raynard* v. *Chase* (1756), 1 Bur. 6; Lord Kenyon in *Smith* v. *Company of Armourers*, (1792), 1 Peake, 199; Dolben, J., in *Hobbs* v. *Young* (1690), 3 Mod. 317.

introduced a long series of exceptions in favour of many classes (*z*). The justices ceased to settle the rate of wages; and when journeymen weavers, with a view to keep up their remuneration, sought to compel the justices to fix a rate of wages, the Court of King's Bench declined to interfere by *mandamus* (*a*). The establishment of factories led to its disuse, and made it highly inconvenient in the woollen trade, which was excluded in 1809 from the operation of the statute (*b*). In 1814 the provisions of the Act of Elizabeth relative to apprenticeships were repealed (*c*). Thus ended the old industrial system of England.

In the second part of this volume will be found the chief statutes which have been passed with reference to master and servant. They are numerous and important. Parliament has passed a series of Acts known as the Factory Acts, beginning with the 42 Geo. III., c. 73, in 1802, and ending with the Factory and Workshop Act of 1878, with a view to improve the lot of women and children labouring in factories. It has consolidated in the Merchant Shipping Act of 1854, and other measures the law relative to seamen. The evils produced by the practice of paying workmen in goods instead of money early attracted the attention of the Legislature, and led to the passing of various Acts, which were replaced by the measure now in force (*d*). The combination laws have been abolished. Trades-unions are no longer illegal associations in the sense in which they once were. The laws passed in the reigns of George I. and II. with a view to hinder artificers going abroad have long ceased to be put in operation, and they now do not exist (*e*). Breaches of contracts of service are treated in almost all respects as breaches of other contracts. The settlement laws are amended. The work-

(*z*) The first of these was 15 Chas. II., c. 15, and one of the last 50 Geo. III., c. 41, s. 22.

(*a*) *Rex* v. *Cumberland* (1813), 1 M. & S. 190.

(*b*) 49 Geo. III. c. 109. 53 Geo. III. c. 40, repealed the 5 Eliz. c. 4, and 1 James I. c. 6, in regard to the assessment and rating of wages by the justices.

(*c*) 54 Geo. III. c. 96.

(*d*) 1 & 2 Will. IV. c. 37.

(*e*) 5 Geo. IV. c. 97.

man of these days is thus immeasurably removed, not only from the villain as described by Bracton, but from the free workman of Tudor times, who was bound by the rules of his guild, who must often take what wages others had determined to be his due, and who could not move freely about.

APPENDIX A.

Traces of Villenage.

It is often contended that several peculiarities of the law of master and servant may be traced to the time when the villain was the property of his lord (*a*). The following are some of the principles said to be borrowed from villenage :

(1.) There is authority, as will be seen, for the proposition that a master may justify an assault committed in defence of his servant. This may have originated in the notion that, to quote a phrase in one of the Year Books, *le servant est en manner son chattel* (*b*), or, to quote the language of Crook, J., in *Seaman* v. *Cuppledick* (*c*), that "The lord may justifie in defence of his villain for he is his inheritance." But the servant may also justify an assault in defence of his master (*d*) ; and these rights may be deduced from an obligation in the master and servant as members of the same household to render each other protection. In early decisions will be found many expressions which show that the relations of master and servant, father and children, husband and wife, were regarded as in many respects the same (*e*).

(2.) The liability of a master for the acts of his servant in the course of employment, which is treated of in Chapter XXVIII., is sometimes

(*a*) Mr. Willes's argument in *Lumley* v. *Gye* (1853), 2 E. & B. 216 ; Holland's Jurisprudence, 194.

(*b*) 19 Henry VI. fol. 31, 6, pl. 66.

(*c*) (1614), Owen, 150.

(*d*) There is no doubt as to the right of the servant ; and it has been held that a servant may justify an assault in order to obtain repossession of his master's property. *Blade* v. *Higgs* (1861), 10 C. B., N. S. 713. On the other hand, the right of the master to justify an assault in defence of his servant has been questioned, *Leeward* v. *Basilee* (1696), 1 Salk. 407, and 1 Ld. Ray. 62, on the unsatisfactory ground that he could have an action for loss of service. But this was not followed in *Tickell* v. *Read* (1773), Loft. 215, where Lord Mansfield said, "I cannot tell them (the jury) a master interposing when his servant is assailed is not justifiable under the circumstances of the case, as well as a servant interposing for his master : it rests on the relation." See also Dalton's Justice, 121 ; Hawkins' P. of C. ii. 60, and Pulton, De Pace Regis, 13. There is authority for holding that a master may aid his servant in bringing an action without being liable for maintenance. Russell on Crimes, vol. i. 354 ; Blackstone, i. 428.

(*e*) See the curious passage in Hale's Pleas of the Crown, i. 483, where it is said, "The like law had been for a master killing, in the necessary defence of his servant, the husband in the defence of the wife, the wife of the husband, the child of the parent, the parent of the child

ascribed to the theory, once true of villains, that the servant was the property of the master, who ought to answer for the acts of a person who had no rights apart from his master. One objection to the accuracy of this view is, that the principle of liability, as now understood, was not clearly laid down until long after villenage was extinct, and that for some time after it was destroyed, a master's responsibility was often described as more limited than it is now admitted to be. While villenage disappeared about the beginning of the seventeenth century, no clear traces of the modern doctrine of the master's liability exist before the time of Holt, C.J. (*f*).

(3.) To the influence of villenage is sometimes ascribed the principle of the Common Law, that possession by servants of their masters' goods is regarded as possession of the master himself. Hereafter (*g*) it will be necessary to return to this principle, which is productive of important consequences, civil and criminal. In the oldest cases on the subject there is no reference to villenage (*h*). The distinction between property, possession, and mere *detentio*, exists in the nature of things, and must be more or less clearly recognised in all systems of jurisprudence. No doubt the English lawyers found in the Civil Law the distinction. The development of its consequences was different in the two systems, because the Roman lawyers were chiefly concerned with the cases in which possession existed without property according to the *Jus Quiritium*, while the English Common Law was mainly interested in the cases in which persons had bare *detentio*, and not possession, and could be indicted for larceny in the case of their converting chattels (*i*).

(4.) It has also been suggested that the action for enticing or harbouring a servant originated in the same way. According to the view put forward by Coleridge, J., in *Lumley* v. *Gye* (*k*), no action for enticing away or procuring a servant to depart lay before the Statute of Labourers, the 23rd Edward III. The objections to this view are neither few nor unimportant, and most of them are stated below (*l*).

(5.) At Common Law a master has the right to correct or chastise

. . . for they are in a mutual relation to each other." He classes the relationship of master and servant amongst "relationships œconomical." Hale's Analysis, p. 33.

(*f*) See chapter xxviii.

(*g*) Chapter iii.

(*h*) See, however, Bracton, f. 165.

(*i*) Chapter iii.

(*k*) (1853), 2 E. & B. 216 ; 1 W. R. 432 ; *Bowen* v. *Hall* (1881), L. R. 6 Q. B. D. 333 ; 29 W. R.

(*l*) 1. It is not certain that at Common Law an action for the wrongful procuring of the violation of other contracts than hiring and service would not lie. See Crompton, J., *Lumley* v. *Gye*, 2 E. & B. 230, and especially the remarks of Brett, L. J., in *Bowen* v. *Hall* (1881), L. R. 6 Q. B. D. 333 ; *Green* v. *Button* (1835), 2 Cr. M. & R. 707 ; *Winsmore* v. *Greenbank* (1745), Willes, 577. 2. The action for enticing away has survived the repeal of the Statute of Labourers. 3. As is pointed out in Smith's Master and Servant, referring to Lut. ii. 1548, the circumstance that the writ for enticing away recited the Statute did not necessarily show that the action did not lie at Common Law. 4. Pulton, p. 3, citing a case in 22 Lib. Ass. Ed. III., p. 76, decided three years before the Statute, shows that an action lay against a person who by menaces drove away a servant. Pulton also states the law in the same manner with respect to the enticing away of servants and *tenants* and the references which he quotes from the Year Books, 20 Hen. VII., p. 5, and 9 Hen. VII., p. 7, support his view. 5. Such an action lay

moderately (*m*) his apprentice, and some of the old authorities state that the same right extends to the correction of servants. The question is discussed in chapter i.; and, if the right ever existed, it may have originated in villenage.

(6.) It is pointed out in Hargrave's Notes to Coke on Littleton (*n*), that the maxim, *quicquid acquiritur servo acquiritur domino*, "holds in some degree in respect to apprentices and servants, particularly the former, though with a great difference in point of extent and application." See as to this *Morrison* v. *Thompson* (*o*), and also chapter xix. So far as the cases recognise any right in a master to wages or prize money earned by his servant while in the employment of another, it is not readily deducible from the nature of the contract of hiring and service. Most of the decisions may be supported on the ground that a servant is an agent, and stands in a fiduciary capacity, and is bound to account for all earnings made in the course of his employment. But other cases, if rightly decided, can be supported only on the supposition that a master has a species of property in his servant (*p*).

according to the law of Scotland, though the Statute of Labourers was never in force there, Fraser's Master and Servant, Campbell's ed., p. 308.

(*m*) p. 32.

(*n*) 117a.

(*o*) (1874), L. R. 9 Q. B. 480; 43 L. J. Q. B. 215; 30 L. T. 869; 22 W. R. 859.

(*p*) Blackstone, i. 429.

PART I.

COMMON LAW.

CHAPTER I.

MASTER AND SERVANT AND MASTER AND SLAVE.

THE relation of Master and Slave cannot legally be created in England; and no rights arising out of that relation can be here enforced (*a*).

The exact legal position of a slave in England was uncertain until the King's Bench, in 1772, in Lord Mansfield's time, decided *Sommersett's Case* (*b*). Chief Justice Holt (*c*) and Lord Chancellor Northington (*d*) had given expression to *dicta* hostile to the rights of the slave-owner; but there were decisions of a contrary character from 1677 (*e*) to the time of Lord Hardwicke's decision in *Pearne* v. *Lisle* (*f*), that a slave was as much property as any chattel. In 1729, Sir Philip York, the Attorney-General, and Mr. Talbot, the Solicitor General, gave it as their opinion that a slave, by coming from the West Indies to Great Britain or Ireland did not become free; and in consequence of this opinion slaves were publicly sold in London, Bristol, and Liverpool (*g*). The question in *Sommersett's Case* arose on the return to a writ of

(*a*) See note (*k*).

(*b*) (1771-1772), 20 Howell's S. T. 1; see also *Knight* v. *Wedderburn*, Dictionary of Decisions (hiring for life without wages held to be slavery). The English law courts were long reluctant to decide the question, Wynne's Law Tracts (A.D. 1765), 27.

(*c*) *Smith* v. *Browne* (1705), 2 Salk. 666, but see *Forbes* v. *Cochrane* (1824), 2 B. & C. 448.

(*d*) *Stanley* v. *Harvey* (1762), 2 Eden, 125. "As soon as a man sets foot on English ground he is free; a negro may maintain an action against his master for ill-usage, and may have a *habeas corpus* if restrained of his liberty."

(*e*) *Butts* v. *Penny* (1677), 2 Lev. 201; *Gelly* v. *Cleves* (1694), Ld. Raymond, 147.

(*f*) (1749), 1 Ambler, 75.

(*g*) There were, it is said, 14,000

habeas corpus, which stated that Sommersett was the negro slave of Charles Steuart, who had delivered him into the custody of Knowles, the captain of a ship lying in the Thames, in order to carry him to Jamaica, and there sell him as a slave. The Court decided that this was not a sufficient return. Slavery, said Lord Mansfield, "being an odious institution, could be introduced only by positive law. Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England, and therefore the black must be discharged." Speaking of this decision in *Rex* v. *Thames Ditton* (*h*), Lord Mansfield stated that the determinations went no further than that the master (Knowles) could not compel the slave to quit England. Lord Stowell in the *Slave Grace Case* still further qualified the effect of the *Sommersett Case* (*i*). A slave had come to England with her master. Of her own accord she returned to the Island of Antigua, where slavery then existed. Lord Stowell decided that she had not become free by her temporary residence here, and that the owner's property in his slave had not been destroyed. "There is nothing that makes a liberation from slavery; he goes back to a place where slavery awaits him, and where experience has taught him slavery is not to be avoided" (*k*).

slaves in London when *Sommersett's Case* was decided, Burge, Com. i. 740.

(*h*) (1785), 4 Doug. 301.

(*i*) (1827), 2 Hag. Ad. 94.

(*k*) The chief subsequent decisions are: *Madrazo* v. *Willes* (1820), 3 B. & Ald. 354; *Buron* v. *Denman* (1848), 2 Ex. 167; *Santos* v. *Illidge* (1860), 8 C. B., N. S. 861; 29 L. J. C. P., 348. The effect of these decisions is thus stated by Cockburn, C.J., in his memorandum on the subject, to be found in the report of the Royal Commission on Fugitive Slaves, p. xxvii.: "These cases establish beyond controversy that the tribunals of this country recognise the right of property of the owner of the slave, so long as the slave is in the country by the law of which the owner's right is upheld, or in the possession of the owner in a ship of a nation in which slavery is lawful; and that if the property in the slave is interfered with by a British subject, to the injury of the owner, an action for damages will lie to the extent of the loss sustained." The dictum of Best, C.J., in *Forbes* v. *Cochrane* (1824), 2 B. & C. 468, that "no action founded upon a right arising out of slavery," could be maintained in English courts, must therefore be taken with reservation. The proposition at the head of this chapter must be read

Slavery being illegal in this country, it has often been contended that contracts of hiring and service for life are in substance slavery, and as such should be regarded as null and void. In some countries the maxim *nemo potest locare opus in perpetuum* is strictly applied (*l*) ; but here a contract to serve for life is valid, provided it be not open to the objection of fraud or duress, and provided there be consideration for the promise. This was first decided in 1837 by the Court of Exchequer in *Wallis* v. *Day* (*m*). The plaintiff, sold his business as carrier to the defendants, and covenanted that he would henceforth during his life serve them as an assistant in the trade of carrier. The plaintiff's covenant to serve was held good.

A contract of hiring must not be made a cover for the reality of slavery. Thus English law will not recognise in a master a right to imprison his servant for disobedience to orders or any other offence, even if a servant agreed to such terms of service (*n*). The Common Law would not even recognise the

in the light of the above decisions.

(*l*) *On ne peut engager ses services qu' à temps ou pour entreprise déterminée*, Art. 1780 of Code Civil. See M. Laurent's *Principes de Droit Civil Français*, 25, 542, *Si même le temps stipulé était tellement long qu' il pût équivaloir à une aliénation de la liberté, bien qu'il ne comprit pas la vie entière du locateur, les juges pourraient rompre un tel engagement.* Troplong's Louage, ii. 288. M. Laurent takes up the same position. So far, however, as his remarks do not relate to cases in which there is no consideration for the promise to serve for life, they would be fatal to all contracts of hiring and service, whatever might be their duration. In *Allen* v. *Shene*, Morrison's Dictionary of Decisions, 23, 9454, a contract to serve three terms of nineteen years was "reduced," as being in restraint of trade. As to other Scotch decisions, Campbell's edition of Fraser on Master and Servant, 3, 4.

(*m*) (1837), 2 M. & W. 273. In Viner's Abridg., Master and Servant, N. 5, xv. 323, it is stated that a contract to serve for life must be by deed. The reference given is 2 H. f. 14, p. 15. The action, however, in this case was not by the master against the servant upon a contract to serve for life, but an action of simple debt against executors by a servant to recover arrears of wages for services actually performed. Such an action was not then maintainable. 3 & 4 Will. IV. c. 42, s. 14. The case, too, turned on the Statute of Labourers. See also Blackstone, i. 424; Chitty on Contracts, 10th ed., 532.

(*n*) *Clarke* v. *Gape* (1596), 5 Reports, 129. It turns on the doctrine of Magna Charta, c. 9, *Nullus liber homo imprisonetur* ; *Foster* v. *Jackson*, (no date; but in time of Charles II.), Hob. 61. See the protest of Ellenborough, C.J., in *Rex* v. *Stowmarket* (1808), 9 East, 211, against the idea that a parish apprentice could be transferred as if a parish slave.

validity of an agreement by certain workmen or masters to work or not according to the decision of a majority (*o*). It is said, however, that there is one distinct exception to the principle that purely servile incidents cannot be attached to a contract of hiring; a master may, it is said, chastise a hired servant (*p*). Notwithstanding *dicta* to be found to this effect, it is improbable that such a right would be admitted in modern times. The authorities in favour of it are old. Some of them referred to the relation of lord and villain; such a right does not flow from the contract of hiring and service as now understood; usage is wholly against the existence of so dangerous a power; and there are *dicta*—in *Winstone* v. *Linn* (*q*), for example—against it. On the other hand, a master may chastise his apprentice for negligence or disobedience, provided it be done moderately (*r*). The apprentice is placed with the master to be instructed;

(*o*) *Hilton* v. *Eckersley* (1856), 6 E. & B. 47.

(*p*) Bacon's Abridgement, Master and Servant, N. Probably the law upon this subject has changed. It is clear that Hale (History of Pleas of the Crown, 453) and Hawkins (Pleas of the Crown, i. 85) understood that such a power existed. See also Foster's Criminal Law, 262, and 3 Salk. 47. Such, too, seems to have been Holt, C.J.'s, ruling in *Keat's Case*, which was a case of master and servant. Skinner (1697), 668. Blackstone, i. c. 14, only goes so far as to say that "if the master or master's wife beat any other servant of *full age*, it is good cause of departure. In an anonymous case of the 28th and 29th Charles II., it was held a good answer to an action for assault and battery of one servant by another that the latter was ordered to bring the plaintiff from a conventicle. The Chief Justice and Scroggs, J., were of opinion that "a man may as well send for his servant from a conventicle as an alehouse, and may keep him from going to either of those places." In a learned anonymous work published in 1767, entitled "Laws concerning Masters and Servants," p. 126, the existence of the right of correcting servants is recognised; and the same is true of Bird's Law of Master and Servant (1801), p. 5. On the other hand, there is a passage in Fitzherbert, F. N. B., 168, to the effect that battery by the master is a good cause of departure. See also Hawkins, i. 483. Kent in his Commentaries, ii. 261, says the right of chastising "may safely be confined to apprentices and menial servants while under age, for then the master is to be considered *in loco parentis*." In *Regina* v. *Huntley* (1852), 3 C. & K. 142, it was ruled by Platt, B., that one servant, even an upper servant, had no right to chastise another servant. See also *Latter* v. *Braddell* (1880), 50 L.T. 166 and 448; 43 L. T. 369; 29 W. R. 239.

(*q*) Holroyd, J., (1823), 1 B. & C. 469.

(*r*) Chitty's Gen. Prac. vol. i. 70a; *Gylbert* v. *Fletcher*, Croke (4 Ch. I.), 719; *Penn* v. *Ward* (1835), 2 C. M. & R. 338; *Combes' Case* (1613), 9 Rep. 76a.

and as he cannot be dismissed for misconduct, which may be done in the case of a servant, and as the master stands *in loco parentis*, it is deemed expedient to permit him to chastise an apprentice. Another exception exists in the case of a master of a ship. Having authority to do what is necessary for the safety of the ship and those on board, he may imprison a seaman or inflict reasonable and moderate chastisement for disobedience to lawful commands, insubordination or mutinous, riotous or insolent conduct (*s*). The power may be exercised not merely when the ship is at sea and beyond the reach of assistance (*t*). No particular mode or instrument of punishment is prescribed; it will depend on the circumstances of the case and the gravity of the offence how the culprit should be punished. But the punishment must be applied with due moderation, and should a captain inflict upon a seaman immoderate and unreasonable punishment, he will become a trespasser (*u*), and will be liable to an action. Due inquiry should be made before punishment is inflicted (*x*). It is the duty of the master to cause a clear statement of all offences committed, the inquiry and the punishments inflicted, to be inserted in the official log.

(*s*) *Rhodes* v. *Leach* (1819), 2 Stark. 516; *Agincourt* (1824), 1 Hag. 271, 273; *Lowther Castle* (1824), 384; *Hannaford* v. *Hunn* (1825), 2 C. & P. 148, which shows that the verdict of a court martial would not be conclusive evidence of the truth of a master's charges against a seaman.

(*t*) *Lamb* v. *Burnett*, 1 Cr. & J. (1831), 291, (action for assaulting seamen on board ship at anchor within two miles of Macao, and within hail of several vessels; held that the mutinous conduct of the plaintiff was a good justification). Bayley, J., uses language which seems to imply that this power exists anywhere; but query if the vessel was in the Thames or in any English port. *Enchantress* (1825), 1 Hag. Ad., 395. *The Lima* (1837), 3 Hag. 346, as to use of force to prevent mutiny.

(*u*) *Watson* v. *Christie* (1800), 2 B. & P. 224; Maclachlan's Law of Merchant Shipping, 3rd ed., 205. As to punishments of seamen for offences against discipline at sea, 17 & 18 Vict. c. 104, s. 243; Part II. Chapter IX.

(*x*) 17 & 18 Vict. c. 104, s. 244. As to duty of instituting inquiry, *Murray* v. *Moutrie*, 6 C. & P. 471. See as to punishments of sailors, sec. 149 of the Merchant Shipping Act of 1854, Part II. Chapter IX.; the Regulations as to misconduct sanctioned by the Board of Trade, July, 1869; Boyd's Merchant Shipping Acts, 138; and Maude and Pollock's Merchant Shipping, 4th ed., 126.

CHAPTER II.

Definitions of Master and Servant.

A SERVANT is one who for consideration agrees to work subject to the orders of another (*a*).

Few judicial definitions of a servant are to be found in the reports. Judges have generally acted in regard to this

(*a*) The difficulty of defining the relation of master and servant will be best appreciated by considering some of the attempts to do so. "A person who contracts with another to do certain work for him is the servant of that other until the work is finished, and no other person can employ such servant to the prejudice of the first master;" *Blake* v. *Lanyon* (1795), 6 T. R. 222; cited with approbation by Crompton in *Lumley* v. *Gye*; 2 E. & B. 226. Perhaps these words, which would include contractors, were not intended as a complete definition. "The test is very much this, viz., whether the person charged is under the control, and bound to obey the orders of his master;" Blackburn, J., in *Queen* v. *Negus* (1873), L. R. 2 C. C. 37, with reference to "clerk or servant" in 24 & 25 Vict. c. 96, s. 68. "A servant is a person subject to the command of his master as to the manner in which he shall do his work;" Bramwell, L. J., in *Yewens* v. *Noakes* (1880), L. R. 6 Q. B. D. 532. "A clerk or servant is a person bound either by an express contract of service or by conduct implying such a contract to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact;" Stephen's Digest of Criminal Law, 220. In a work on the Law of Master and Servant, published in 1767, I find the following definition: "A servant seems to be such an one as, by agreement and retainer, oweth duty and service to another, who, therefore, is called his master. "A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master;" New York Code, s. 1034. "In strictness, a servant is one who, for a valuable consideration, engages in the service of another, and undertakes to observe his directions in some lawful business;" Cooley on Torts, 531. "A person who ultroneously agrees to give his services to another for a determinate time, and an ascertained hire, and who may get rid of the contract by paying damages;" Fraser on the Law of Master and Servant, 3. "A person who hires his services ultroneously to another, for a certain price in money, and who may get rid of the contract by paying damages;" Fraser, Personal and Domestic Relations (ed. 1846), ii. 367. "Volun-

matter on the principle *omnis definitio in lege periculosa est.* Though important consequences, civil and criminal, hang

tary (as opposed to 'necessary') servants are those who enter into service without compulsion, by an agreement or contract, for a determinate time;" Erskine, 1, title 7, 62. "A master is one who has legal authority over another; and the person over whom such authority may be rightfully exercised is his servant" (Schouler on Domestic Relations, 599), which would equally apply to the relations of master and servant and master and slave. "A master is one who, by law, has a right to personal authority over another; and such person, over whom such authority may be rightly exercised, is servant:" Reeve's Domestic Relations, 399. This is open to the same objections as the last. In Gibbon's Law of Contracts of work and service it is said that the relation of master and servant is a contract "whereby one man lets his personal services to another, either for a particular purpose or generally, and by which the servant is bound to do as much as he himself can towards the performance of the work for which he is engaged"—a definition which seems to include some unnecessary elements. "Shortly," says Lord Justice Bramwell, "the relation of master and servant exists where the master can not only order the work, but how it shall be done. When the person to do the work may do it as he pleases, then such person is not a servant;" *Letter to Sir Henry Jackson.* Dr. Johnson's definition is "one that attends another, and acts at his command"—which is most applicable to menial servants. Austin makes the relation turn on the fact that either of the parties to the relation "incurs obligations and acquires rights of which the objects are not determinable individually, though their kinds may be fixed" (Jurisprudence ii. 976). In other words, the relation of master and servant is a certain status, a view which, though true of domestic servants, &c., does not hold good of a servant employed to do one act, or a similar set of acts repeatedly; see, too, *R.* v. *Spencer*, R. & R. 299. "He is to be deemed the master who has the supreme choice, control, and direction of the servant, and whose will the servant represents, not merely in the ultimate result of his work, but in all its details;" Shearman & Redfield on Negligence, s. 73. "In its legal acceptation it (servant) includes any one who is bound to perform services, on the authority and for the benefit of another, his master, whether these services are rendered gratuitously or for a stipulated consideration;" Sconce's Law of Master and Servant, quoted in Currie's Indian Criminal Code, 354. See Hobbes's definition, English Works, ii. 109.

In consequence, no doubt, of the ambiguity of the phrase "master and servant," modern Acts have made use of such terms as "employers and workmen" (see sec. 10 of 38 & 39 Vict. c. 90), or have defined what they meant by contracts of service (see 30 & 31 Vict. c. 141).

As to the meaning of "servants" in wills, see *Townshend* v. *Windham* (1706), 2 Vern. 546. "Stewards of Courts, and such who are not obliged to spend their whole time with their master, but also may serve any other master" not within bequest to "such of my servants as shall be living with me at the time of my death." *Sleech* v. *Thorington* (1754), 2 Ves. Sen. 560 (bequest to "the three servants that shall live with me at the time of my death;" testatrix had three at time of death; all included). *Chilcot* v. *Bromley* (1806), 12 Ves. 114 (bequest to "all my other servants who shall be living with me at the time of my decease," did not include a coachman provided with carriage and horses by a job-master, though returned by testator as his coachman under Acts imposing duty on male servants). *Herbert* v. *Reid* (1810), 16 Ves. 481 (legacy to plaintiff "if in his service" at time of

upon the distinction between servant and contractor, servant and bailee, servant and agent, servant and partner, Courts have, as a rule, abstained from defining the relation of master and servant. They have been content to deal with each case as it arose. For hundreds of years the word or similar terms have been used in statutes. Difficulties arose as to its meaning in one of the first Acts in which it appears, the 25 Edw. III. s. 1 (*b*). Similar difficulties still frequently

testator's death; parol evidence to show that plaintiff, though sent from the testator's house before his death, was considered by him to be in his service; held entitled). *Howard* v. *Wilson* (1832), 4 Hagg. Ecc. 107 (a coachman, who was originally hired by, and had lived for five years with, the testatrix, and who remained with her, though she changed her job-men, entitled, under "each of my servants living with me at the time of my death;" the job-masters paid him wages, and found him in livery). *Booth* v. *Dean* (1833), 1 My. & K. 560 (under bequest to "each of my servants one year's wages over and above what may be due to them at time of my decease," only "family servants, usually hired by the year," and not a gardener or cow-boy at weekly wages). *Parker* v. *Marchant* (1842), 1 Y. & C. 290 (a person in the testator's service at time of date of codicil, but who quitted it before his decease, entitled, under bequest, "to the other servants"). *Billing* v. *Ellice* (1845), 9 Jur. 936 (a farm bailiff who had lived with testator twenty-eight years, who had £350 a-year, and who was entitled to take pupils in agriculture, entitled under "one year's wages to each of my servants in my service at my death who shall have lived with me five years or upwards"). *Ogle* v. *Morgan* (1852), 1 D. M. & G. 359 (head gardener, living in one of testator's cottages, and not fed by him, not "a servant in my domestic establishment"). *Blackwell* v. *Pennant* (1852), 9 Hare, 551 (bequest of a year's wages to "servants living with me at the time of my decease, and who shall then have lived in my service for three years," included servants living in a different house from that in which testator lived; excluded servants not hired by the year). *Thrupp* v. *Collett* (1858), 26 Beav. 147, 5 Jur. N. S. 111 (under bequest to "servants in his (testator's) service at the time of his decease," two outdoor servants continuously employed at weekly wages, entitled; not so a boy employed at weekly wages in carrying letters a few months in the year, whilst the testator was at his country residence, though the boy was so employed at testator's death). *Armstrong* v. *Clavering* (1859), 27 Beav. 226 (a land agent and house steward, residing out of the house, entitled under a bequest to "all my servants and day labourers who shall be in my service at the time of my death"). *Darlow* v. *Edwards* (1862), 1 H. & C. 547; 32 L. J. Ex. 51; 6 L. T., N. S., 905 (a servant who had been wrongfully dismissed two days before the testator's death, not entitled under bequest of an annuity, "provided she shall be in my service at the time of my decease"). *Re Hartley's Trust*, W. N., May 4, 1878 (legacy to M. B., provided she remained in testatrix's service till her death; testatrix removed to lunatic asylum; M. B. dismissed with wages in lieu of notice; order in lunacy directing sale of property of testatrix; M. B. not entitled to legacy). See Jarman on Wills, 4th ed., vol i., p. 325; Williams on Executors, ii. 1152; Redfield on Wills, vol. i., sec. 53.

(*b*) An embroiderer a servant or labourer within the statute, 47 Ed. III., f. 22; a collector of rents not within it, 19 Hen. VI., f. 53.

arise as to who is a servant within the meaning of the many Acts in which the word occurs. Yet the Legislature has rarely attempted to define it. The above definition is not offered as perfect. The term is, in fact, used loosely and in different senses. No definition which would include all its significations in statutes, in settlement cases, in actions for seduction or for enticing away, and in wills, is possible. The word has not been employed in the same sense at different periods of history. It has been extended to relations to which it was not once applicable.

Originally the term indicated a sort of status. A servant was generally a member of his master's household. He was in a sense under his master's *potestas*. He is mentioned in the same context as the wife or son or daughter of the house. The relation is often described as one of allegiance (*c*). The statute of treason, 25 Edward III. s. 5, which enumerates various forms of treason, and which adds "there is another manner of treason (petit treason), that is to say, when a servant slayeth his master, or a wife her husband, or when a man, secular or religious, slayeth his prelate, to whom he oweth faith and obedience," presupposed that master and servant stood to each other in a degree of intimacy which is not now implied. Even at the same date the use of the term has varied according to the subject matter. In actions for seduction, a person who does any trifling act of service is regarded as a servant (*d*). Mere casual temporary employment for a particular purpose will not suffice to make a person a servant within the meaning of some statutes (*e*). In the case of others this is enough (*f*). Servant is used, for example, in one sense in the Carriers Act (11 Geo. I. and 4 Will. IV. c. 68, s. 8) (*g*), and in another in the Larceny Act (24 & 25

See as to the difficulties which arose as to what servants could be punished for petty treason, 1 Hale P. of C., 380.

(*c*) Bacon's Abridg. V. 333.

(*d*) See Chapter XXIII.

(*e*) Roscoe, Criminal Evidence, 9th ed., 453; see, however, *R.* v. *Hughes* (1832), 1 Mood. C. C., 370.

(*f*) It is often used as a synonym for domestic servant, *Yewens* v. *Noakes* (1880), L. R., 6 Q. B., 538.

(*g*) See p. 49.

Vict. c. 96, s. 68) (*h*). The above definition is offered only as explanatory of a usual acceptation. No word in legal literature is more common or more ambiguous than "servant."

(*h*) The following are some of the chief decisions under the statutes with respect to "servant" and "clerk."

SERVANT—

Rex v. *Squire* (1818), R. & R. 349, (overseers of a township employed prisoner as their accountant and treasurer; received and paid all money receivable or payable on their account; servant or clerk within 39 Geo. III. c. 85).

Rex v. *Hughes* (1832), 1 M. C. C., 370, (prisoner employed as driver to drive a cow and calf and to bring back the price. He was employed to receive in one instance only; within 7 & 8 Geo. IV. c. 29, s. 47).

Reg. v. *Tongue* (1860), 30 L. J., M. C. 49, (prisoner secretary to a money club; his duty to summon meetings and to make out the promissory notes on demand and to countersign all cheques upon the treasurer; he received a salary).

Reg. v. *Macdonald* (1861), 31 L. J., M. C., 67, 5 L. T., N. S., 330, (prisoner a cashier and collector of a firm; he received in lieu of increase of salary percentage of profits; no control over business).

Reg. v. *Proud* (1861), 31 L. J., M. C. N. S. 71, (paid secretary of a friendly society, whose duties were to attend meetings of lodge, write minutes of proceedings, keep correct accounts of receipts and expenditures, &c. He was a member of the society).

Reg. v. *Tite* (1861), L. & C. 29, 30 L. J., M. C. 142, 14 L. T., N. S., 259 (prisoner a commercial traveller employed by prosecutors; paid by commission; at liberty to receive orders from others).

Reg. v. *Hastie* (1863), 32 L. J., M. C. 63 (secretary of a benefit society, who had according to the rules, nothing to do with the receipt of money paid off by trustees, but who was in the habit of receiving such money; held that he might be convicted of embezzlement under 7 & 8 Geo. IV. c. 29, s. 47).

Reg. v. *Dixon* (1863), 11 Cox, C. C.

NOT SERVANT—

Rex v. *Burton* (1829), 1 M. C. C. 237, (prisoner a clerk of chaplain who collected the sacrament money from the communicants, is not the servant of the incumbent, churchwardens, or poor of township within 7 & 8 Geo. IV., c. 29, s. 47).

Reg. v. *Walker* (1858), 27 L. J., M. C. 207; 1 Dears. & Bell, C. C. 600, (prisoner kept a refreshment room; employed by prosecutors to get orders for manure; paid by commission; no definite time to be spent in collecting orders; with a view to obtain the security of guarantee society, prosecutors paid a salary of £1 a year).

Reg. v. *May* (1861), 30 L. J., M. C. 81; 3 L. T., N. S. 680, (defendant employed to obtain orders for iron at a certain commission. It was his duty to account immediately to the prosecutors for any money he received).

Reg. v. *Bren* (1863), 33 L. J., M. C. 59; 9 L. T., N. S. 452, (prisoner a member of a committee formed of members of two friendly societies for the purpose of conducting a railway excursion; defendant and others nominated to sell tickets; received no remuneration; he did not pay over proceeds of tickets to person appointed to receive the money).

Reg. v. *Glover* (1864), L. & C. 466; 33 L. J., M. C. 169; 10 L. T., N. S. 582 (under-bailiff of County Court, not servant of high bailiff, though appointed by him; servant of the Court).

Reg. v. *Bowers* (1866), L. R., 1 C. C. 41; 35 L. J., M. C. 206; 14 L. T., N. S. 671, (prisoner first employed as agent or traveller for the sale of coals at a salary of one guinea a week and 1*s.* a ton commission to collect debts. Subsequently on his going into the retail trade salary stopped, and only paid by commission).

Many contracts relating to work, labour, and services do not establish the relation of master and servant. Bail-

178, (prisoner engaged by U. at weekly wages to manage a shop. U. having assigned all his estate and effects to R., a notice was served on prisoner to act as agent of R. in the management of the shop. For fourteen days R. received the money from U., who continued to pay prisoner his wages during the whole period. Subsequently R. reconveyed the estate and effects to U. But the deed was not registered until after the embezzlement charged against the prisoner. Prisoner servant of U.).

Reg. v. *Carpenter* (1869), L. R. 1 C. C. 29; 35 L. J., M. C. 169; 14 L. T. N. S. 572; 14 W. R. 773 (prisoner, who was elected assistant overseer by the inhabitants in vestry, and subsequently appointed to that office by warrant of two justices, and who performed the duties of overseer, well described in an indictment for embezzlement as the servant of the vestry, on the authority of *Reg.* v. *Watts*, 7 A. & E. 461).

Reg. v. *Redford* (1869), 11 Cox, C. C. 367; 21 L. T., N. S. 509 (secretary of building society who was also one of the trustees, servant of the trustees).

Reg. v. *Turner* (1870), 11 Cox, C. C. 551; 22 L. T., N. S. 278, (prisoner employed to act as the traveller of R. E., and "diligently employ himself in going from town to town . . and soliciting orders;" R. E. had full control over his time and services. Prisoner agreed to act as traveller; at liberty to take orders for others, but not without prosecutor's written permission; to be paid by commission).

Reg. v. *Bailey* (1871), 24 L. T., N. S. 477: 12 Cox, C. C. 56, (A. employed as traveller to collect money due on execution of orders, and to pay over the money every evening of the day or on the following day; he might get orders when and where he pleased, but to be exclusively in the employment of prosecutors, and to give his whole time), C. C. R.

Reg. v. *Mayle* (1868), 11 Cox, C. C. 150, (M. employed as "London agent;" no salary; perfectly optional whether he obtained orders or not; not bound to collect on any particular day).

Reg. v. *Marshall* (1870), 21 L. T. 796; 11 Cox, C. C. 490 (prisoner employed by coal merchant; to receive 1*s.* 4*d.* per ton as procuration fee, and 4 per cent. for collecting, &c.; no salary; at liberty to go where he pleased for orders).

Reg. v. *Negus* (1873), L. R. 2 C. C. 34; 42 L. J., M. C. 62; 28 L. T. 646; 21 W. R. 687 (prisoner employed to solicit orders where he pleased; and to be paid by commission; received no salary; not to hire himself to others than prosecutor), C. C. R.

Reg. v. *James Hall* (1875), 31 L. T. 883; 13 Cox, 49, (an accountant and debt collector employed by prosecutors to collect certain specified debts according to his discretion; to be paid by percentage; jury found he was employed as a clerk; Court for Crown Cases Reserved, held finding was wrong).

ment, contracts of affreightments, contracts between principals and brokers or factors, clients and solicitors, differ in important respects from a contract of hiring and service. A. contracts with B. to build a wall of a specified length and height for a certain sum; A. is to be free to provide the necessary labour and materials in any manner he chooses; B. bargains for the result of A.'s labour and skill. Though a contract for work and services, this is different from an agreement by A. to build a wall for B., subject to his directions, and to labour exclusively for him during certain hours. In English law the former is a contract of work and labour, the latter, one of hiring and service. An artist receives a commission to paint a portrait; a journeyman painter is employed to paint coaches under the supervision of a foreman; a commissionaire is employed to go on a special errand; a lad is hired to carry the messages of an establishment; a carrier agrees to take a parcel from one place to another; it is a man's duty to carry the goods of a certain firm and subject to their directions—these are so many instances of contracts of work and service, and contracts of master and servant. A railway company entered into a contract for the building of cars

Reg. v. *Foulkes* (1875), 2 L. R., C. C. 150; 44 L. J., M. C. 65; 32 L. T. 407; 23 W. R. 699 (prisoner assisted his father as clerk to a local board, and in his father's absence acted for him as clerk to the board; but received no salary and was not appointed as clerk by the board. The prisoner managed for his father the raising of a loan for the board; evidence that prisoner was a clerk or servant), C. C. R.

"It is a question for a jury, whether a person accused of embezzlement is a clerk or servant or not," says Mr. Justice Stephen with reference to 24 & 25 Vict. c. 96, s. 68, and citing *R.* v. *Negus*, L. R. 2 C. C. 34; *R.* v. *Tite*, L. & C. 33; *R.* v. *May*, L. & C. 13, Digest 220. The question who is a servant, is not in regard to civil liability entirely one for the jury; and in some of the above cases convictions were quashed when persons not legally servants were found to be such by juries, *e.g.*, *R.* v. *Hall*, 13 Cox, C. C. 49. In some instances the question is one entirely for the judge, *R.* v. *Bowers*, L. R. 1 C. C. 41.

See 31 & 32 Vict. c. 116, as to larceny by joint owners.

with a certain patent improvement. The contractor had no licence to use the patent which had to be employed if the improvement were made. No action, it was held, lay against the railway company for infringing the patent, because the contractor carried on an independent business, had workshops of his own, and made the cars as he saw fit (*i*). Had he been subject to the directions of the company, they would have been liable for the violation of the patent, because the relation of master and servant would have then existed.

Some common tests of the existence of this relationship are not perfect. Two persons are not always respectively master and servant, because the one can discharge the other (*k*). The hand which pays wages is not necessarily the master's (*l*). A person may be entitled to exercise control over others who work, and yet they may be not his servants, but the servants of a contractor (*m*). A. may be bound to give service exclusively to B., and yet he may not be for all purposes B.'s servant (*n*). The person who appoints or engages a servant is not necessarily the master. Though the crew of a ship are generally engaged by the captain, not the owner, they are the servants of the latter. The relation may exist between two persons, both of whom perform manual work (*o*); and a man may be the servant of another,

(*i*) See *Fenton* v. *City of London Steam Packet Co.* (1838), 8 A. & E. 835; *Reedie* v. *London & North Western R. Co.* (1849), 4 Ex. 244.

(*k*) *Reedie* v. *London & North Western R. Co.*

(*l*) *Willett* v. *Boole* (1860), 6 H. & N. 26. The person who appoints is not necessarily master; *R.* v. *Callahan*, 8 C. & P. (1837) 154 (Callahan appointed by vestrymen of the parish; rightly described as servant of committee of management); *R.* v. *Jenson* (1835), 1 Mood. 434 (clerk elected by managers of savings' bank; rightly described as clerk to the trustees). See also *Stone* v. *Cartwright* (1795), 6 T. R. 411; *R.* v. *Hoseason*, (1811), 14 East, 605. See *Bogg* v. *Pearse*, (1851), 10 C. B. 534, as to public officers appointed under Acts of Parliament and to be paid out of rates.

(*m*) *Allen* v. *Hayward* (1845), 7 Q. B. 960; 10 Jur. 92; 15 L. J. Q. B. 99. But see remarks of Denman, C. J., at p. 975.

(*n*) *Bowen* v. *Hall* (1881), L. R. 6 Q. B. D. 333.

(*o*) *Ashworth* v. *Stanwix* (1861), 3 E. & E. 701; *Mellors* v. *Shaw* (1861), 1 B. & S. 437.

though his remuneration may not be called wages, but profit or commission (*p*). In the case of actions of seduction, the common tests of the relationship fail. By a legal fiction, the relation of master and servant is sometimes said to exist between parent and child, when, in any but a very vague sense, the former is not a master, and the latter is not a servant (*q*).

Difficulties frequently arise with respect to the legal position of a servant while he works for another person than his master. This point was considered in the *Rex* v. *Ivinghoe* (*r*), decided in 1717. There it was said, "If I lend my servant to a neighbour for a week, or any longer period, and he go accordingly, and do such work as my neighbour sets him about, yet all this while he is in my service, and may be reasonably said to be doing my business." This principle was applied in *Holmes* v. *Onion* (*s*). The defendant hired a thatcher, S., to thatch for him for six weeks. During that period, without the knowledge of the defendant, S. agreed to thatch ricks for the plaintiff. After the work had been begun, the defendant told the plaintiff that S. was his servant, and that he must be paid. At the plaintiff's request the defendant sent a person to assist S. in thatching. In an action against the defendant for negligence on the part of S., it was held that S. was the servant of the defendant, who was, therefore, responsible for his acts. In all such cases the servant is, to use an expression of Sir William Grant in *Chilcot* v. *Bromley* (*t*), the subject of the contract and not a party to it. The same point was again considered in the leading cases of *Laugher* v. *Pointer* (*u*), and *Quarman* v. *Burnett* (*x*). In the former the owner of a carriage hired for the day a pair of horses and a driver; the horses be-

(*p*) See *Reg.* v. *McDonald* (1861), L. & C. 85 (defendant paid partly by salary and partly by a percentage on profits; a servant within 7 & 8 Geo. IV., c. 29, s. 47.) See *Reg.* v. *White* (1839), 8 C. & P. 742, as to servant paid by gratuities.

(*q*) Chapter XXII.

(*r*) 2 Botts. 293.

(*s*) (1857) 2 C. B. N. S. 790.

(*t*) (1806) 12 Ves. 114.

(*u*) (1826) 5 B. & C. 545.

(*x*) (1840) 6 M. & W. 499. The point had also been considered in

longed to a livery-stable keeper in whose employment the driver was. The plaintiff having been injured in consequence of the negligence of the driver, the question arose whether the owner of the carriage was liable. Two judges, Bayley, J., and Holroyd, J., were of opinion that he was liable. Two judges, Abbott, C.J., and Littledale, J., took the opposite view. The point was finally decided in *Quarman* v. *Burnett,* the facts of which were these: the owners of a carriage, who were in the habit of hiring horses from the same person for a day or for a drive, always had the same driver, gave him a fixed gratuity, and provided him with a livery, which he kept in the hirers' hall. While he was hanging up the livery, he left the horses. An accident happened, and the plaintiff was injured. The Court of Exchequer adopted the view of Abbott, C.J., and Littledale, J. In delivering the judgment of the Court, Baron Parke said, "It is undoubtedly true that there may be special circumstances, which may render the hirer of job horses and servants responsible for the neglect of a servant, though not liable by virtue of the general relation of master. He may become so by his own conduct, as by taking the actual management of the horses, or ordering the servant to drive in a particular manner, which occasions the damage complained of, or to absent himself at one particular moment, and the like." Baron Parke proceeded to say:—

"As to the supposed choice of a particular servant, my brother Maule thought there was *some* evidence to go to the jury of the horses being under the defendants' care, in respect of their choosing this particular coachman. We feel a difficulty in saying that there was any evidence of choice, for the servant was the *only* regular coachman of the job-mistress's yard; when he was not at home, the defendants had occasionally been

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Smith v. *Lawrence* (1828), 2 M. & R. 1, & *Brady* v. *Giles* (1835), 1 M. & Rob. 494. It may be doubted whether the authorities are consistent as to this point. Compare *Laugher* v. *Pointer* with *Rourke* v. *White Moss Co.*, L. R. 5 C. P.; and *Knight* v. *Fox*, 5 Ex. 721. Would not the driver in *Quarman* v. *Burnett* have been regarded as the fellow-servant of a footman of the hirer?

driven by another man, and it did not appear that at any time since they had their own carriage, the regular coachman was engaged, and they had refused to be driven by another; and the circumstances of their having a livery, for which he was measured, is at once explained by the fact, that he was only the servant of Miss Mortlock (the livery-stable keeper), ever likely to drive them. Without, however, pronouncing any opinion upon a point of so much nicety, and so little defined, as the question, whether there is *some* evidence to go to a jury, of any fact, it seems to us, that if the defendants had asked for this particular servant, amongst many, and refused to be driven by any other, they would not have been responsible for his acts and neglects. If the driver be the servant of a job-master, we do not think he ceases to be so by reason of the owner of the carriage preferring to be driven by that particular servant, where there is a choice amongst more, any more than a hack post-boy ceases to be the servant of an innkeeper, where a traveller has a particular preference of one over the rest, on account of his sobriety and carefulness. If, indeed, the defendants had insisted upon the horses being driven, not by one of the regular servants, but by a stranger to the job-master, appointed by themselves, it would have made all the difference. Nor do we think that there is any distinction in this case, occasioned by the fact that the coachman went into the house to leave his hat, and might therefore be considered as acting by their directions, and in their service. There is no evidence of any special order, in this case, or of any general order to do so at all times, *without leaving any one at the horses' heads.* If there had been any evidence of that kind, the defendants might have been well considered as having taken the care of the horses upon themselves in the meantime. Besides these two circumstances, the fact of the coachman wearing the defendants' livery with their consent, whereby they were the means of inducing third persons to believe that he was their servant, was mentioned in the course of the argument as a ground of liability, but cannot affect our decision. If the defendants had told the plaintiff that he might sell goods to their livery servants, and had induced him to contract with the coachman, on the footing of his really being such servant, they would have been liable on such contract: but this representation can only conclude the defendants with respect to those who have altered their condition on the faith of its being true. In the present case, it is matter of evidence only of the man being their servant, which the fact at once answers. We are therefore compelled to decide upon the question left unsettled by the case of *Laugher* v. *Pointer*, in which the able judgments on both sides have, as is observed by Mr. Justice Story in his book on Agency, page 406, 'exhausted the whole learning of the subject, and should on that account attentively be studied.' We have considered them fully, and we think the weight of authority and legal principle is in favour of the view taken by Lord Tenterden and Mr. Justice Littledale. The immediate cause of the injury is the personal neglect of the coachman, in

leaving the horses, which were at the time in his immediate care. The question of law is, whether anyone but the coachman is liable to the party injured; for the coachman certainly is. Upon the principle that *qui facit per alium facit per se*, the master is responsible for the acts of his servant; and that person is undoubtedly liable, who stood in the relation of master to the wrong-doer—he who had selected him as his servant, from the knowledge of or belief in his skill and care, and who could remove him for misconduct, and whose orders he was bound to receive and obey; and whether such servant has been appointed by the master directly, or intermediately through the intervention of an agent authorised by him to appoint servants for him, can make no difference. But the liability, by virtue of the principle of relation of master and servant, must cease where the relation itself ceases to exist: and no other person than the master of such servant can be liable, on the simple ground, that the servant is the servant of another, and his act the act of another; consequently, a third person entering into a contract with the master, which does not raise the relation of master and servant at all, is not thereby rendered liable; and to make such person liable, recourse must be had to a different and more extended principle, namely, that a person is liable not only for the acts of his own servant, but for any injury which arises by the act of another person, in carrying into execution that which that other person has contracted to do for his benefit. That, however, is too large a position, as Lord Chief Justice Eyre says, in the case of *Bush* v. *Steinman* (1 Bos. & Pull. 404), and cannot be maintained to its full extent without overturning some decisions, and producing consequences which would, as Lord Tenterden observes, 'shock the common sense of all men:' not merely would the hirer of a post-chaise, hackney-coach, or wherry on the Thames, be liable for the acts of the owners of those vehicles, if they had the management of them or their servants, if they were managed by servants, but the purchaser of an article at a shop, which he had ordered the shopman to bring home for him, might be made responsible for an injury committed by the shopman's carelessness, whilst passing along the street. It is true, that there are cases—for instance, that of *Bush* v. *Steinman*, *Sly* v. *Edgley* (6 Esp. 6), and others, and perhaps amongst them may be classed the recent case of *Randleson* v. *Murray* (8 A. & E. 109)—in which the occupiers of land or buildings have been held responsible for acts of others than their servants, done upon, or near, or in respect of their property. But these cases are well distinguished by my Brother Littledale, in his very able judgment in *Laugher* v. *Pointer*. The rule of law may be, that where a man is in possession of fixed property, he must take care that his property is so used or managed, that other persons are not injured; and that, whether his property be managed by his own immediate servants, or by contractors with them, or their servants. Such injuries are in the nature of nuisances: but the same principle which applies to the personal occupation of land or houses by

a man or his family, does not apply to personal movable chattels, which, in the ordinary conduct of the affairs of life, are intrusted to the care and management of others, who are not the servants of the owners, but who exercise employments on their own account with respect to the care and management of goods for any persons who choose to intrust them with them. It is unnecessary to repeat at length the reasons given by my Brother Littledale for this distinction, which appear to us to be quite satisfactory ; and the general proposition above referred to, upon which only can the defendants be liable for the acts of persons who are not their servants, seems to us to be untenable. We are, therefore, of opinion, that the defendants were not liable in this case, and the rule must be made absolute, to enter a verdict for the defendants on the second issue."

It has sometimes been alleged that a person cannot be the servant of two masters. "I am of opinion," said Baron Parke, in *Rex* v. *Goodbody* (*y*), "that a man cannot be the servant of several persons at the same time, but is rather in the character of an agent." This opinion, which seemed to be a natural consequence of the older view of the relation, which was in accordance with some *dicta*, and which was supported by decisions in regard to settlement cases, has not been followed. A. cannot be at once the servant of B. and C., in the sense that he is bound at the same time to obey both. He may, however, be the servant of both in such a sense that he may be prosecuted for embezzlement by B. or C. as a "clerk or servant ;" that B. or C. may be liable to strangers for his torts ; and that, while the servant of B., he cannot claim damages against C. for the acts of C.'s servants, inasmuch as he is in law their fellow servant. In two classes of cases the Courts have distinctly held that a man may be the servant of two masters. Thus it has been decided that a person who is employed by more than one may be "a clerk or servant" within the 24 & 25 Vict. c. 96, s. 68, and 7 & 8 Geo IV. c. 29, s. 47. In *Regina* v. *Batty* (*a*), a clerk

(*y*) (1838) 8 C. & P. 665.

(*a*) (1842) 2 Mood. C. C. 257 ; *R.* v. *Leech* (1821), 3 Star. 70 ; and *Tite's Case* (1861), L. & C. 29, 30 L. J. M. C. 142. See also remarks of Bayley, J., in *Laugher* v. *Pointer* (1826), 5 B. & C. 569, and in *Hardy* v. *Ryle* (1829), 9 B. & C. 603.

employed by A. to sell goods for him was convicted of embezzlement, though at the same time he was employed by other persons in other business; and in *Regina* v. *Carr* (*b*) it was also held that a traveller employed by several houses might be properly convicted of embezzlement.

Nothwithstanding the decision in *Quarman* v. *Burnett* above mentioned, the Courts have in several instances held —and the tendency appears to be to hold—that a servant of A. who goes to work with B., is, in certain circumstances, to be regarded as the servant of B., so far, at least, as the liability of B. to third persons or fellow servants is concerned, He may remain the general servant of A.; but for some purposes he is also the servant of B. This is best illustrated by *Rourke* v. *White Moss Company* (*c*). The defendants, who were the owners of a colliery, had begun to sink a shaft, and had employed workmen, and among others the plaintiff. They entered into a contract for the completion of the work with one, Roger Whittle. He was to find and provide all labour necessary for the sinking, and the company were to provide and place at the disposal of Whittle the necessary engine power, ropes, and hoppets, with two engineers to work the engine, one for the day, and one for the night, such engineers, engine, and hoppets being under the control of the contractor. Ellis Lawrence, one of the two engineers, was in charge of the engine on the 27th of October, 1874. He was paid by the company. By the negligence of Lawrence, the plaintiff, who was one of the men employed by Whittle, was injured. The Court of Common Pleas and the Court of Appeal were of opinion that the defendants were not liable. The grounds on which the decision was placed will be stated fully subsequently. Here, however, may be quoted remarks made by Cockburn, C. J.: "It appears to me that the defendants put the engine and this man Lawrence at Whittle's disposal just as much as if they had lent both to him. But when one person lends his servant to another for

(*b*) (1811) R. & R. 198.
(*c*) (1876) L. R. 1 C. P. D. 556; 2 C. P. D. 205; see also *Self* v. *London & Brighton Rail. Co.* (1880). 42 L. T. 173.

a particular employment, the servant for anything done in that particular employment must be dealt with as the servant of the man to whom he is lent, although he remains the general servant of the man who lent him. Looking at the present case, I think we must arrive at the conclusion that Lawrence was practically in Whittle's service at the time he was guilty of the negligence complained of: and this being so, it follows that Lawrence became the fellow-servant of the plaintiff" (*d*).

One may be for some purposes a servant, and for others not. A *prima donna*, engaged to sing so many nights, would not be for all purposes a servant; obviously she would not, for example, be a servant within the meaning of the 24 & 25 Vict. c. 96, s. 68; nor would she be bound to sing as the manager chose to direct. Yet she is so far regarded as a servant, that an action will lie for enticing her away from her employment (*e*). The proprietor of a cab and horse who entrusts them to a driver for the day, to be used at the driver's discretion, the latter paying a fixed sum for the cab, and all that he makes above that sum being his perquisite, does not stand in the relation of master to the driver;

(*d*) Chapter XXVII. It is difficult to reconcile these expressions with the remarks of Parke, B., in *Quarman* v. *Burnett*. Compare *Swainson* v. *North Eastern Rail. Co.* (1878) L. R. 3 Ex. D. 341; 47 L. J. Ex. 372; 38 L. T. 201; 26 W. R. 413. In accordance with *Rourke* v. *White Moss Co.* is *Johnson* v. *Boston* (1875), 118, Mass. 114. (Plaintiff, in the employment of T., who employed a large number of workmen in drilling and blasting rocks. Plaintiff was sent by T. to drill and blast rocks in a sewer which the defendants were constructing; the whole work was under the general supervision of the defendants' superintendent of sewers and foreman; T. paid his men $2·25 a-day, and had no power to dismiss them or give orders; the defendants paid T. $2.45 each day for each of his men when employed; the plaintiff was injured by the negligence of the defendants' servants in not "bracing" the sewer. Held on the authority of *Wiggett* v. *Fox*, 11 Ex. 832, and *Kimball* v. *Cushman*, 3 Mass. 194, that the plaintiff could not recover, he being a fellow-servant of the servants of the defendants.) See also *Stevens* v. *Armstrong*, 6 N. Y. 435. (Defendant sent his servant to B.'s store to get a box which he had bought of P. By permission of P. the servant went to a loft for the box, and lowered it down. Through the negligence of the servant the box fell, and injured the plaintiff. The Court held that while so engaged the servant was the servant of P.) But query.

(*e*) *Lumley* v. *Gye* (1853), 2 E. & B. 216; 22 L. J. Q. B. 463. Compare the remarks of Lord Westbury in *Knox* v. *Gye*, L. R. 5, E. & I. Ap. 675, as to a similar ambiguity in "trustee."

the relation is rather that of bailor and bailee. But, looking to the provisions of 6 & 7 Vict. c. 86, ss. 10, 23, 24, 27, and 28, the Queen's Bench Division have held that "as regards mischief done by the driver, who is selected by the proprietor, the relation of master and servant so far exists as to render the proprietor responsible for the acts of the driver" (*f*). A railway company employed under a subcontract Messrs. Chaplin and Horne to carry goods for them. A bale delivered to the railway company to be carried by them was stolen by Johnson, one of Messrs. Chaplin and Horne's servants. The question arose whether he was a servant of the railway company within the 8th section of the Carriers Act, 11 Geo. IV. & 1 Will. IV. c. 68, which says that "nothing in the Act contained shall be deemed to protect any mail contractor, stage coach proprietor, or other common carrier for hire, from liability to answer for loss or injury whatsoever arising from the felonious acts of any coachman, guard, book-keeper, porter, or other servant in his employ." It cannot be doubted that Johnson was not for all purposes the servant of the railway company. Yet the Court of Exchequer decided that Johnson was a "servant" within the meaning of the 8th section. "I think," said Rolfe, B., "that a very large construction ought to be given to these words; they must be taken to mean book-keepers, porters, or other persons actually employed to do what the carrier has undertaken to do" (*g*). A man who employs contractors is, as a rule, not responsible for the acts of them or their servants; but it will be seen in a subsequent chapter that liability will be incurred, and they will be treated as his servants if he interfere with and direct them (*h*). To take another example

(*f*) *Powles* v. *Hider* (1856), 6 E. & B. 207; *Venables* v. *Smith* (1877), L. R. 2 Q. B. D. 279; and remarks of Grove, J., in *Steel* v. *Lester* (1877), L. R. 3 C. P. D. 126. The subject has been lately reviewed in *King* v. *Spurr*. See Chapter III.

(*g*) *Machu* v. *London & S. W. R. Co.* (1848), 2 Ex. 415; 17 L. J. Ex. In reference to the same word in the 8th sect. of the Railway & Canal Traffic Act of 1854, Lord Blackburn said in *Doolan* v. *Midland Rail. Co.* (1877), L. R. 2 H. of L. 1810, the word "embraces servants as well as agents."

(*h*) Chapter XXVIII.

of the same difficulty, a person may not have been properly appointed a servant of a banking or other company, and he could not fairly contend, as a regularly appointed servant could, that he was entitled to a certain notice before being discharged; but if he were suffered to act as cashier, manager, or otherwise, the company would not be permitted to disclaim responsibility for his acts (*i*).

Subsequently it will be pointed out that for some purposes a volunteer is treated as a servant (*j*). In the chapters relating to masters' liabilities for the acts of servants, it will be seen that those who *de facto* perform work for another, though not under any agreement, will be treated as servants (*k*). This has long been recognised. "A wife, a friend, a relation, that use to transact business for a man," says Blackstone, "are *quoad hoc* his servants" (*k*). In other words, though the relation of master and servant does not strictly exist, they may bind him as his agents.

Often the difficulty in ascertaining whether a person is a servant or not is one of fact.

Services are frequently rendered under circumstances which leave it uncertain whether they are done in virtue of an implied contract or out of affection and gratitude. A person goes to stay with a relative and does work for him. A boy is taken into a household out of charity and assists his benefactor. A person does work for another, who has promised or is expected to leave him a legacy (*l*). It is not easy to say in such cases whether or not there was an implied contract of hiring and service. It matters not that no words on the subject passed; if the understanding be that one is to do work for another and subject to his orders, the relation of master and servant will exist. Often it is not easy to know

(*i*) *Bank of United States* v. *Dandridge*, 2 Wheaton, 64. See also *R.* v. *Beacall* (1824), 1 C. & P. 457; *Re County Assurance Co.* (1870), L. R. 5 Ch. 288; and Brice on *Ultra Vires*, 644.

(*j*) Chapter XXVII.; *Booth* v. *Mister* (1835), 7 C. & P. 66 (plaintiff's carriage injured by defendant's team; at time of injury the team driven not by servant of defendant, but by person to whom defendant had intrusted the reins; defendant liable).

(*k*) Com. 1, 418.

(*l*) See Chapter XIII.

whether the parties meant or understood what they did not in fact express, or expressed what they did not really mean. In the many cases which have arisen with respect to persons alleged to be clerks or servants within the meaning of 24 & 25 Vict. c. 96, s. 68, the difficulty has been chiefly one of fact; the jury have been asked to say, from the whole circumstances connected with the employment, whether the prisoner was a servant.

So many are the acceptations of the word "servant," that no definition which will include all uses of it is possible. How it is employed in any statute can be known only by studying the language and object of the enactment. Take, for example, the phrase "servant and other person" in the 32 & 33 Vict. c. 14, s. 11. Tenements occupied as a house for the purposes of trade only, or as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop or counting-house, or being used as a shop or counting-house, are exempted from inhabited house duties, "although a servant or other person may dwell in such tenement, or part of a tenement, for the protection thereof." Every species of servant does not come within this exception. The object of the Legislature in creating it must be considered. It was not intended that under this section a counting-house or warehouse should be used also as a dwelling-house. The respondent in *Yewens* v. *Noakes* (*m*) claimed exemption in respect of premises used for the purpose of his trade. A clerk in his employment at a salary of £150 a year lived on the premises in order to take care of them; he and his wife, children, and servant occupied five rooms. The Court of Appeal thought that the clerk, though a servant, did not come within the Act. "It appears to me," said Lord Justice Thesiger, "that the Legislature, in using the term 'servant,' is using that term in the ordinary and popular sense of it; that is to say, not in the sense in which any clerk or manager is called the servant of his employer, or in the sense in which the judges might be said to be the servants of the Crown,

(*m*) (1880) L. R. 6 Q. B. D. 530.

but in the sense of the ordinary menial or domestic servant." Yet even in this case, Lord Justice Thesiger added, if the Commissioners had found as a fact that the clerk was a servant or other person within the Act, the Court would not have been justified in interfering with their decision. On the other hand, in *Rolfe* v. *Hyde* (*n*), decided subsequently, the Court thought that the Income Tax Commissioners were justified in finding that a cashier with a salary of £200 a year, who occupied a sitting-room and bedroom on the top storey of the respondent's warehouses and counting-houses, and who slept on the premises solely as caretaker and for their protection, was "a servant or other person" within 41 Vict. c. 15, s. 13, part 2.

(*n*) (1881) L. R. 6 Q. B. D. 673.

CHAPTER III.

HIRING AND SERVICE AND SIMILAR CONTRACTS.

THE relation of master and servant may be still further explained by distinguishing it from other legal relations which it approaches, and with which it is often confounded.

Servant and Agent.

A servant is for certain purposes, and in certain circumstances, hereafter stated, the agent of his master (*a*). He is authorised to pledge the credit of his master in many cases, and we shall find, so far as torts are concerned, that he is treated as the agent of the master, even for acts which the latter has prohibited, and that the master is held responsible for the acts of his servant in the course of his employment. Sometimes the terms agent and servant are used, especially in the Courts of the United States, as if interchangeable (*b*). It is, however, frequently necessary to distinguish them. "A principal has the right," said Bramwell, B., in *R.* v. *Walker* (*c*), "to direct what the agent has to do; a master has not only that right, but also the right to say how it is to be done." The question most frequently arises with reference to the meaning of "clerk or servant" in the 68th sect. of the 24th & 25th Vict., c. 96. The Courts have looked not so much to the form of remuneration as to the question whether the alleged "clerk or servant" was free

(*a*) Chapter XXVI.

(*b*) "The two terms, 'master and servant,' and 'principal and agent,' are frequently interchanged, as though identical in meaning, and, indeed, one is usually quite as exact as the other;" Schouler on Domestic Relation, 612. He speaks of the term "servant" as offensive, p. 600.

(*c*) (1858) 27 L. J. M. C. 207.

to carry out the object of the employment in the manner which seemed good to him. In *R.* v. *Bowers* (*d*) the prisoner, who was employed to collect orders for coals, was at liberty to get orders, and receive the money as he "thought fit." Erle, C.J., said "A person who is employed to get orders and receive money, but who is at liberty to get those orders and receive that money where and when he thinks proper, is not a clerk or servant within the meaning of the statute. The construction of the documents decides this case. Under the first agreement the prisoner was a servant; but under the second he was at liberty to dispose of his time in the way he thought best, and to get or abstain from getting orders on any particular day as he might choose; and this state of things is inconsistent with the relation of master and servant."

It is essential that the subject-matter and scope of each Act in which "servant" or "agent" is found should be carefully considered in order to determine whether the former is convertible with or included under the latter. The facts in *Lamb* v. *Attenborough* (*e*) showed that a clerk of a wine merchant was authorised by his master to sign delivery orders in his master's name, and to receive dock warrants in his own, and that he was also authorised to pledge the warrants for the purposes of his master's business. In many respects obviously this servant was the agent of his master; but the Court of Queen's Bench decided that he was not an agent within the Factors' Acts, 6 Geo. IV., c. 94, and 5 & 6 Vict., c. 39, and that his master was entitled to recover dock warrants which he had fraudulently pledged with a pawnbroker as security for money lent to him (*f*).

(*d*) (1866) 1 L. R. C. C. 41; 35 L. J. M. C. 206; see *R.* v. *Negus* (1873), L. R 2 C. C. 34; 42 L. J. M. C. 62, and the cases mentioned in note (*h*) of preceding chapter.

(*e*) (1862) 1 B. & S. 831.

(*f*) See distinctions between servant and agent stated in Wharton on Agency, s. 20. Some of them appear fanciful.

Servant and Bailee.

In its widest acceptation bailment includes contracts of hiring and service (*g*); and sometimes a bailee is loosely spoken of as a servant. Thus in *Ward* v. *Macauley* (*h*) it is said "the carrier is considered in law as the servant of the owner, and the possession of the servant is the possession of the master." The two relations, however, are distinct, and it is frequently highly important, especially in questions of criminal law, to distinguish them. In its more limited signification bailment is, as defined by Justice Story, "a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust" (*i*). One technical distinction leading to important practical results must be recognised. At common law a bailee, unlike a servant, was understood to have *possession* of property in his charge, and the consequence was that a bailee could not be guilty of larceny, inasmuch as there could not be a conversion, or in other words a wrongful change of possession (*k*). This has now been altered by 24 & 25 Vict. c. 96, s. 3, which states that "whosoever, being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny (*l*), and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction." Where a drover who was employed on

(*g*) Story on Bailment, s. 423.

(*h*) (1791) 4 T. R. 489.

(*i*) Story, s. 2.

(*k*) Roscoe, Criminal Evidence, 9th Ed. 651. The rule did not apply to possession acquired by trespass or fraud; *R.* v. *Riley* (1853), 22 L. J. M. C. 48.

(*l*) It is pointed out in Russell on Crimes (ii. 317), that "the distinction between a servant and bailee is still material; for although in all such cases as the preceding one (*R.* v. *Hey*, 1 Den. C. C. 602; 2 C. & K. 983) the drover would now be punishable under the 24 & 25 Vict. c. 96, s. 3, yet he would only be punishable as for a simple larceny, whereas a servant is much more severely punishable under s. 67."

a single occasion to take pigs to L., and deliver them to G., and to bring back whatever money he received from G., the drover being paid by the day, but at liberty to drive the cattle of any other person, he was held not to be a servant, but a bailee, and consequently incapable of committing larceny, unless he had intended at the time of receiving the pigs to appropriate them to his own use (*m*). The distinction also meets one in considering the responsibility of a master for the negligence or tortious acts of a servant. Thus, in *Fowler* v. *Lock* (*n*), the question arose whether a cabdriver was a servant or a bailee in these circumstances: he received from a cab proprietor a cab and horse on condition that at the end of the day he should hand over 18*s*., he retaining for himself the balance of the day's earnings; the horse's food to be supplied by the owner; and the owner to have no control over the driver after he left the yard. The horse which the cab proprietor gave was fresh from the country; it had never before been harnessed to a cab; and it ran away and injured the driver. The jury found that the horse was not reasonably fit to be driven in a cab. Byles, J., and Grove, J., were of opinion that the relation between the master and servant was that of bailor and bailee, and that the driver might recover in an action against the proprietor. Willes, J., on the other hand, thought that the relation was that of master and servant, or that of co-adventurers, and that in the absence of proof of personal negligence or misconduct on the part of the former, the latter could not recover. It has been laid down that, so far as the public are concerned, a cabdriver paid in the manner above stated is to be regarded as a servant, and that the cab proprietor will be answerable for his negligence to third persons who are injured by the latter. In two cases cited below (*o*), this conclusion was

(*m*) *R.* v. *Goodbody* (1838), 8 C. & P. 665; *R.* v. *Cooke* (1871), L. R. 1 C. C. 295.

(*n*) (1872), L. R. 7 C. P. 272; 41 L. J. C. P. 99; 26 L. T. 476; 20 W. R. 672. It will be observed that the owner had no right to control the driver.

(*o*) *Powles* v. *Hider* (1856), 6 E. & B. 207; 25 L. J. Q. B. 331; *Venables* v. *Smith* (1877), L. R. 2 Q. B. D.

deduced from the language of the Metropolitan Hackney Carriage Acts (1 & 2 Will. IV. c. 22, and 6 & 7 Vict. c. 86). But in *King* v. *Spurr* (*p*), Grove, J., and Bowen, J., declined to hold, in accordance with certain dicta of Lord Campbell in *Powles* v. *Hider*, that these Acts necessarily created in all cases the relation of master and servant between the owner of the cab and the driver. "There is a great difference," said Grove, J., "between this and the case where a man hires only the cab and provides the horses himself. The difficulty is really not in the facts of *Powles* v. *Hider*, but in the language used by the judges."

Sale and Contracts of Service.

The points of resemblance between sale and certain contracts of work or labour or hiring and service are considerable. They attracted the attention of the Roman jurists, and several passages in Gaius, the Institutes, and the Digest deal with them. In the Institutes the following case is put to clear up the difficulty which arises when materials as well as labour are supplied by the artificer: "Suppose Titius agrees with a goldsmith that the latter shall make with his own gold rings of a specified weight and size for ten *aurei*, is the contract one of sale or hire? Cassius says that there is a contract of sale of the materials and of hiring of the work; but it has been decided that it is only a case of sale. If Titius had given his own gold, and a price had been fixed for the work, of course the contract must have been *locatio conductio*" (*q*). The test, in short, was, Who furnished the material? If the workman did so, then the contract was one of sale; if not the workman, the contract was one of hiring and service. This test, however, did not apply to cases in which the employer furnished one and the workman another

279; 46 L. J. Q. B. 470; 36 L. T. 509; 25 W. R. 584.

(*p*) (1881) L. R. 8 Q. B. D. 104; 51 L. J. Q. B. 105; 45 L. T. 709.

(*q*) iii. tit. 24, s. 4; Gaius, iii., 146; Dig. 19, 2, 2; Vangerow, *Lehrbuch der Pandekten*, s. 632; Laurent, 26th vol., p. 7; Pothier, *Louage*, 1 c. 1.

part of the material; there the rule was *accessorium sequitur principale* (*r*). Nor was the test strictly applied in other cases; *e.g.*, an architect, who agreed to erect a building, and find the materials, was said to have entered into a contract of hiring and letting, because he did not sell the soil on which the house stood, and to which it was an accessory (*s*).

The question possesses importance in English law for several reasons. The 17th sect. of the Statute of Frauds states that "no contract for the sale of any goods, wares, or merchandises, for the price of £10 sterling, or upwards, shall be allowed to be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised." Doubts having arisen in consequence of a series of decisions, beginning with *Towers* v. *Osborne* (*t*) in 1724, as to whether this section extended to executory contracts—that is, contracts for future and not immediate delivery of goods—the Legislature passed the 9 Geo. IV. c. 14 (Lord Tenterden's Act) which stated (sect. 7) that the provisions of the 17th sect. "shall extend to all contracts for the sale of goods of the value of £10 sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery." In consequence of these enactments, it is often necessary to ascertain whether a contract is for the sale of goods or for work and labour. The question has been the subject of much controversy. In *Atkinson* v. *Bell* (*u*), it was held that a contract for the manufacture and delivery of a machine was within the

(*r*) Story on Bailment, 247, Domat, 1, tit. 4, s. 7.
(*s*) Domat, tit. 4, s. 7.
(*t*) 1 Str. 506.
(*u*) (1828) 8 B. & C. 277.

statute. In *Clay* v. *Yates* (*x*)—an action by a printer who had verbally agreed with the defendant to find paper for and print 500 copies of a treatise called "Military Tactics" at so much a sheet, and who declined to print the introduction, which he discovered contained libellous matter—the question arose, whether the contract was a contract for sale of goods within the 17th sect. of the Statute of Frauds, as extended by the 9 Geo. IV. c. 14, s. 7. The Court was of opinion that it was not within the statute. In his judgment, Pollock, C.B., observed, that in his view "the true criterion is, whether work is the essence of the contract, or whether it is the materials supplied. My impression is, that in the case of a work of art, whether in gold, silver, marble, or plaster, where the application of skill and labour is of the highest description, and the material is of no importance as compared with the labour, the price may be recovered as work, labour, and materials." This test has not been adhered to. In *Lee* v. *Griffin* (*y*), which was an action by a dentist to recover the price of two sets of teeth, this test was rejected; the correctness of the decision in *Atkinson* v. *Bell* was affirmed; and the true criterion was thus stated by Blackburn, J.: "If the contract be such that, when carried out, it would result in the sale of a chattel, the party cannot sue for work and labour; but, if the result of the contract is that the party has done work and labour which ends in nothing that can become the subject of a sale, the party cannot sue for goods sold and delivered." This criterion would place among contracts for work and labour such contracts as those brought before the Court in *Clark* v. *Mumford* (*z*) (a farrier employed professionally and supplying medicine), and in *Grafton* v. *Armitage* (*a*) (a machinist employed by an inventor to make experiments, the former furnishing the materials), and contracts for making chattels and fixing them to the freehold (*b*).

(*x*) (1856) 1 H. & N. 73.
(*y*) (1861) 1 B. & S. 272.
(*z*) (1811) 3 Camp. 37.
(*a*) (1845) 2 C. B. 336; 15 L. J. C. P. 20.
(*b*) In Benjamin on Sale, 2nd ed., p. 84, the rule is thus stated: "If the contract is intended to result in

Servant and Contractor.

The distinction between servant and contractor is, in theory, clear. It is recognised in *Rapson* v. *Cubitt* (*c*), *Reedie* v. *London & N. W. R. Co.* (*d*), *Overton* v. *Freeman* (*e*), *Peachey* v. *Rowland* (*f*), and many other cases, and important consequences hang upon it. Speaking generally, it may be said that if a person who is employed to execute work exercises an independent employment, and is not subject to control—if, *e.g.*, a tradesman is called in by a householder to do a certain job in the way which seems best to the former—he is a contractor not a servant. Probably the distinction cannot be put more clearly than it was by Lord Justice Brett in explaining the law to the Select Committee on Employers' Liability. "If you were to contract with a person that he and his servants should do all your work in the way you should direct his servants to do it, they are your servants; that is only a different mode of paying them; but if you contract that he and his servants should do the work in the way he thinks best, then he is a contractor" (*g*). Clear though the distinction appears, it is often, in practice, drawn with difficulty. The two relations approximate. In our complicated modern society, it may not be easy to determine whether a person is a contractor or servant; and one who is the former will be treated for certain purposes as if he were the latter in the event of his being controlled and directed by the former (*h*).

transferring for a price from B. to A. a chattel in which A. had no previous property, it is a contract for the sale of a chattel." A similar question arose as to the words "living by buying and selling" in 21 James I. c. 19, s. 2, and 6 Geo. IV. c. 16, s. 2. Under these statutes the Courts held that a man who sold stones from a quarry on his own estate, or bought a coal mine, and worked it, and sold the coals, did not come within the above words; Montagu and Gregg's Bankrupt Laws, p. 8.

(*c*) (1842) 9 M. & W. 710; 6 Jur. 606.

(*d*) (1849) 4 Ex. 244.

(*e*) (1852) 11 C. B. 867; 16 Jur. 21 L. J. C. P. 52; 3 C. & K. 49.

(*f*) (1853) 13 C. B. 182.

(*g*) 1877, vol. x. p. 123.

(*h*) Wood (Master & Servant, p. 601) thus distinguishes the two relations: "When a person lets out work to another to be done by him, such person to furnish the labour,

Servant and Apprentice.

The distinction between servant and apprentice is of less importance than it was before the repeal of the 5 Eliz. c. 4, s. 5, when apprenticeship was compulsory. That statute made it wrongful for "any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use, or exercise any craft, mystery, or occupation now used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years at the least as an apprentice, in manner and form abovesaid." This was extended to other trades than those mentioned in the Act; and the law remained so until 1814 (*i*). It is still, however, occasionally necessary—for example, with reference to stamps—to determine whether a contract is one of apprenticeship or hiring and service, the rights and duties under the two contracts not being in all respects the same (*k*). In some of the early settlement cases in which the question was considered whether a person had obtained a settlement by contract of service for a year—for example, in *R.* v. *Bolton* (*l*)—it was laid down that a contract of apprenticeship did not exist unless the word apprentice was used; but at all events, since *R.* v. *Mountsorrel* (*m*) this has not been held essential. "No technical words," said Lord Kenyon in *Rex* v. *Rainham* (*n*), "are necessary to constitute the relation of

and the contractee reserving no control over the work or workmen, the relation of contractor and contractee exists, and not that of master and servant." (Action against secretary of Commissioners to improve Wicklow harbour, for placing certain piles not lighted; defence that the defendants had committed the execution of the work to a certain contractor; held a good defence.) *Gilbert* v. *Halpin*, 3 Ir. Jur. N. S. 300. The difficulty of distinguishing the two will be best appreciated by referring to two cases; *Sadler* v. *Henlock* (1855), 4 E. & B. 570, and *Sproul* v. *Hemmingway*, 14 Pick. 1.

(*i*) 54 Geo. III. c. 96. See remarks of Jessel, M.R., in *Re Camden Charities*, L. R. 18 Ch. D., p. 325.

(*k*) See with respect to stamps, Chapter XI. For purposes of embezzlement Acts an apprentice is a servant; *R.* v. *Mellish* (1805), Russ. & Ry. 80.

(*l*) (1783) Cald. 369.

(*m*) (1814) 2 M. & S. 460.

(*n*) (1801) 1 East, 531.

master and apprentice." The words "teach" or "instruct," or the like, need not be employed. The Court will judge from the whole contract whether the substantial and principal object of the contract be to hire and serve, or to teach and learn; in other words, to create the relation of master and servant, or that of master and pupil (*o*). The payment of a premium is strong evidence of apprenticeship, but it is not decisive; nor will the absence of a premium be proof that the contract is one of hiring and service (*p*). "Where teaching on the part of the master," said Taunton, J., in *R.* v. *Crediton* (*q*), "or learning on the part of the pauper is not the primary, but only the secondary, object of the parties, that will not prevent (where work is to be done for the master) the contract being considered one of hiring and service" (*r*).

Servant and Tenant.

The same person may be at once the servant and the tenant of another; there is no incompatibility between the relations (*s*). But in law, the possession of the servant is that of the master; and from this principle follow important consequences with respect to the occupation of premises by servants.

(1.) As regards menial or domestic servants, or officials occupying premises belonging to their masters or employers. The cases which are cited below show that when a servant or an official occupies a house, or room, or land for the purpose of his service, and for the more convenient discharge of his duties, the relation of landlord and tenant is not created; the servant or official has no estate or interest in the premises or land (*t*); and he did not acquire a settlement by

(*o*) *R.* v. *King's Lynn* (1826), 6 B. & C. 97.

(*p*) Bayley, J., in *R.* v. *King's Lynn*.

(*q*) (1831) 2 B. & A. 493.

(*r*) See Appendix A to this chapter.

(*s*) Cockburn, C.J., in *R.* v. *Spurrell* (1865), L. R. 1 Q. B. 72; 35 L. J. M. C. 74. As to steward being lessee of employer, *Selsey* v. *Rhoades* (1824), 2 S. & S. 49.

(*t*) *R.* v. *South Newton* (1830), 10 B. & C. 838.

such occupation. "If the occupation of the servant be necessary to the service," said Cockburn, C.J., in *R.* v. *Spurrell* (*u*), "then I think his occupation is the occupation of the master, although the remuneration which the servant receives is the less on account of his having the advantage of premises, or a house for the purpose of his habitation. On the other hand, if the occupation be not necessary to the service, then the fact that the advantage of the occupation is part of the remuneration of the service will not render that occupation less an occupation *qua* tenant than it would have been if the man had paid rent." Hence it has been held that a servant who was wrongfully dismissed, and whose chattels had been removed to a place where he might have taken them but did not, cannot recover damages for injury to his goods by the weather (*x*). The relation of master and servant having been broken, though wrongfully, the former had a right to remove the furniture. It may be added, that a servant residing in premises assigned to him for residence by his master, cannot dispute the title; and that having got in as a licensee, he must first give up possession if he intends to do so (*y*).

When a servant is allowed to remain in a house or room long after the termination of the relation of master and servant is at an end, it may be a question whether a tenancy is not formed. But no tenancy, not even a tenancy at will, is to be presumed from the mere circumstance that a servant does in fact remain in possession for a short time after the termination of the service. Probably the rule is accurately stated in *Kerrains* v. *State of New York* (*z*), in which, in answer to a contention that immediately upon the termination of service a tenancy at will arose, the Court said, "In order to have that effect, the occupancy must be sufficiently long to warrant an inference of consent to a different holding. Any considerable delay would be suffi-

(*u*) See note (*s*).

(*x*) *Lake* v. *Campbell* (1862), 5 L. T. N. S. 582; *Doe* dem. *Nicholl* v. *McKacg* (1830), 10 B. & C. 721.

(*y*) *Doe* dem. *Willis* v. *Birchmore* (1839), 9 A. & E. 662; *Doe* dem. *Johnson* v. *Baytup* (1835), 3 A. & E. 188.

(*z*) 15 Sickle, 225.

cient, but I can see no principle which would change the occupant *eo instante* from a mere licensee to a tenant."

(2.) Officers or servants of Government claiming to be exempted from the payment of rates. Persons who occupy property belonging to the Crown merely as servants of the Crown, and solely for the purposes of their duties, are exempt. But if the occupation be more than what is reasonably required for the performance of their duties, they are liable to be rated in respect of the excess (*a*).

(3.) As regards the right to vote, the rule is thus stated in "Rogers on Election Law" (*b*): "Where residence in an official or other house is necessary or conducive to the efficient performance of the duty or service required, and is either expressly or impliedly made a part of such duty or service, there the relation of landlord and tenant is *not* created. But where, without any obligation to reside in a particular dwelling, an officer or servant *chooses* to occupy a house which is provided for him, the circumstance that he receives less salary or wages in consideration of the benefit he derives from occupying a house convenient for the discharge of his duty or service, or that he would have an allowance for rent or lodging-money if he did not occupy it, will not prevent him from occupying *as tenant*" (*c*).

(4.) Very much the same question has arisen in regard to burglary: it being requisite to state, in an indictment for that crime, who is the owner of the premises which have been broken into. It has been held that if a public servant or other person reside in royal palaces or apartments which belong to the Crown, the apartments cannot properly be described as his; they are the property of the Crown. Thus, when three persons were indicted for breaking into the lodgings of Sir Henry Hungate at Whitehall, and there stealing certain goods, the judges thought that the indictment must be laid for breaking into the king's mansion called

(*a*) *Earl of Bute* v. *Grindall* (1786), 1 T. R. 338. *R.* v. *Mathews* (1777), Cald. 1; *Portland* v. *St. Margaret*, Cald. 3 n.; *R.* v. *Ponsonby* (1842), 3 Q. B. 14. Appendix B.

(*b*) 13th ed. p. 54.

(*c*) *Smith* v. *Seghill* (1875), L. R. 10 Q. B. 422.

Whitehall (*d*). So, too, in the case of the Invalid Office at Chelsea. It was a Government office, the upper part of which was occupied by William Bunbury, the rent and taxes of the whole house being paid by the Government. It was described in an indictment as Bunbury's dwelling-house. This was held to be a misdescription (*e*). The general rule seems to be, that premises occupied by servants of a public company must be described as the company's premises. Thus a house belonging to a company in which S. and many other persons as officers of the company had separate rooms, was held to be not properly described as his mansion-house (*f*). A house which is detached from a workhouse, and is occupied by the governor, must not be described as his dwelling-house (*g*). Of course, a servant may be a tenant, and the house which he occupies may be properly described as his when he actually pays rent, and when his master could distrain, as in *R.* v. *Jarvis* (*h*). So, too, when a toll-keeper was employed by the lessee of the tolls to be taken at the gates, and when the house was unconnected with any premises of the lessee, who had no interest in it (*i*); or when a gardener lived in a cottage quite apart from his master's house, and kept the key of it (*k*).

Servants or Partners.

Clerks, salesmen, travellers, sailors, and, in fact, servants of all sorts, are often employed on the terms that they share in the profits of a business. Seamen and fishermen are occasionally paid in whole or in part for their services by a proportion of the profits of the adventure, voyage, or season. Are

(*d*) 1 Hale's P. of C., 522.

(*e*) *R.* v. *Peyton* (1784), 1 Leach, 324.

(*f*) *R.* v. *Hawkins*, Foster, 38.

(*g*) *R.* v. *Wilson* (1806), R. & R. 115. So, too, in the case of a steward of a club; *R.* v. *Ashley* (1843), 1 C. & K. 198; see, however, *R.* v. *Margetts* (1801), 2 Leach, 930, and *R.* v. *Witt* (1829), 1 Mood. C. C. 248.

(*h*) (1824), 1 Mood. C. C. 7.

(*i*) *R.* v. *Camfield* (1824), 1 Mood. C. C. 42.

(*k*) *R.* v. *Rees* (1836), 7 C. & P. 568. See Appendix B.

those who are thus remunerated partners? The question may arise between persons sharing in the profits; and in this case the rule is clear, that the whole scope, purport and intention of the agreement must be looked at, in order to determine whether a partnership is constituted. The mere circumstance that the parties to an agreement state therein that it is not to constitute a partnership, or that they insert a reference to the 28 & 29 Vict., c. 86, will not prevent the creation of a partnership if the elements of partnership are to be found in the agreement. In *Ex parte Delhasse* (*l*), a person who advanced £10,000 had a right to a specified percentage of profits, subject to liability to share in losses. He had also a right to have accounts furnished to him. Though it was expressly stated that the sum was advanced by way of loan, under the first section of the 28 & 29 Vict., c. 86, the Court held that a partnership existed. Nor will it suffice to prevent the creation of a partnership that the parties intended that all the incidents of a partnership should, in fact, exist, but did not suppose that a partnership would, in law, be the result. In *Pawsey* v. *Armstrong*, where there was an agreement that the plaintiff should share the profits and loss, Mr. Justice Kay observed, with reference to the plaintiff's contention, that it was not intended that he and the defendant should be partners: "I confess, in my opinion, the agreement to share profit and loss is quite conclusive of the relation between two persons who do so agree, and it is not possible for one of them afterwards to say, 'I was not a partner,' any more than it would be possible for a man and a woman who had gone through the formal ceremony of marriage before a Registrar, and had satisfied all the conditions of the law for making a valid marriage, to say that they were not man and wife, because at the same time one had said to the other, 'Now, mind, we are not man and wife.' Or, to put another illustration, suppose a man allowed his friend to invest £10,000 consols in his name, and said, 'I will hold the consols

(*l*) (1878), L. R. 7 Ch. D. 511; 47 L. J. Bktcy. 65.

and pay the dividends to A. B. during his life, and then to C. D., and afterwards to anybody whom you by will shall appoint: but, mind, I am not to be considered a trustee;' the stipulation that he was not to be a trustee would not prevent his being a trustee. The truth is, that there are certain legal relations which are entered into by agreeing to certain conditions, and when those conditions are agreed to it is quite idle for people to superadd, or to attempt to superadd, a stipulation that the necessary legal consequences of those conditions shall not follow from the arrangement" (*m*). The question may also arise between persons who share in the profits of a business and third parties. It is clear that the intention of the framers of an agreement not to incur liability to third parties may not prevent them being subjected to such liability. The criterion is sometimes expressed thus: "every man who has a share of the profits of a trade ought also to bear his share of the loss" (*n*); "he who takes a moiety of all the profits indefinitely, shall, by operation of law, be made liable to losses if losses arise" (*o*); anyone who "has a specific interest in the profits themselves, as profits" (*p*), and not merely a right to be paid a sum equal to the profits, or who "stipulates for a share in the nett profits of a concern, and has a right to an account of the nett profits as a partner" (*q*), is liable to third persons. Subtle and unsubstantial distinctions were established. Thus, it was held that the receipt of a salary which fluctuated according to the profits of the master's business, did not make a partnership; but if there was a stipulation for a proportion of the profits as profits a partnership was created. The avowed reason for these distinctions was the theory that he who took a part of the nett profits withdrew a portion of the creditors' funds,—a reason which is not in accordance with the fact,

(*m*) (1881), L. R. 18 Ch. D. 698, 704; see also the case of *Naylor* v. *Farrer*, mentioned at p. 705.

(*n*) *Grace* v. *Smith* (1775), 2 W. Bl. 998, 1000.

(*o*) *Waugh* v. *Carver* (1793), 2 H. Bl. 235, 247.

(*p*) *Ex parte Hamper* (1811), 17 Ves. 403, 404.

(*q*) *Heyhoe* v. *Burge* (1850), 9 C. B. 431, 444.

and which is all the more unsatisfactory because nett profits do not exist until debts are paid, and because sharing in gross profits was held not to make one a partner (*r*). The real reason for these subtleties was generally a desire to shield arrangements from the operation of the Usury Acts. Since the decision of the House of Lords in *Cox* v. *Hickman* (*s*), these refinements have lost their importance. A participation in profits is not a perfect test of partnership, though it is, as Lord Cranworth observed in the leading case, "cogent and often conclusive" evidence. The real ground of liability is that a relationship of principal and agent exists; a person is liable to third parties because a trade or business has been carried on by persons acting on his behalf.

The 28 & 29 Vict., c. 86, enacts:—

Sect. 1. The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such (*t*).

Sect. 2. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

(*r*) *Heyhoe* v. *Burge* (1850), 9 C. B. 440.

(*s*) (1860), 8 H. L. C. 268; 30 L. J. C. P. 125.

(*t*) *Pooley* v. *Driver* (1876), L. R. 5 Ch. D. 458; 46 L. J. Ch. 466.

APPENDIX A.

Servant.

R. v. *Little Bolton* (1783), Cald. 367 ; *R.* v. *Eccleston* (1802), 2 East, 298 ; *R.* v. *Shinfield* (1811), 14 East, 541 ; *R.* v. *Burbach* (1813), 1 M. & S. 370 ; *R.* v. *Billinghay* (1836), 5 A. & E. 676 ; *R.* v. *Northowram* (1846), 9 Q. B. 24.

Apprentice.

R. v. *Highnam* (1785), Cald. 491 ; *R.* v. *Laindon* (1799), 8 T. R. 379 (use of word "apprentice" not necessary) ; *R.* v. *Rainham* (1801), 1 East, 531 ; *R.* v. *Mountsorrell* (1814), 2 M. & S. 459. Agreement by a father with R. that R. should take the son of the former for six years to teach him the trade of a frame-work knitter. A contract of apprenticeship, distinguishing the case from *R.* v. *Little Bolton*, inasmuch as the son in the former was entitled to none of the earnings. "The whole contract with the father was bottomed and had for its object the instruction of the son and nothing else." *R.* v. *Bilborough* (1817), 1 B. & Ald. 115 ; *R.* v. *Kidwelly* (1824), 4 D. & R. 309 ; *R.* v. *King's Lynn* (1826), 6 B. & C. 97 ; *R.* v. *Combe* (1828), 8 B. & C. 82 ; *R.* v. *Tipton* (1829), 9 B. & C. 888 ; *R.* v. *Edingale* (1830), 19 B. & C. 739 ; *R.* v. *Knutsford* (1831), 1 B. & Ad. 726 ; *R.* v. *Crediton* (1831), 2 B. & Ad. 493 ; *R.* v. *Newton* (1834), 1 A. & E. 238 ; *R.* v. *Wishford* (1835), 4 A. & E. 216 ; *R.* v. *Ightham* (1836), 4 A. & E. 936. When the contract was not under seal and was not properly stamped, but the manifest object was to teach, the Courts held that there was a defective contract of apprenticeship.

APPENDIX B.

Tenant.	Not Tenant.
Eyre v. *Smallpage* (1750), 2 Bur. 1060. Plaintiff, controller of Chelsea College, and residing in the controller's apartments, which he occupied in virtue of his office. See also reference to the *St. Bartholomew Case*, p. 1061.	*R.* v. *St. Luke's Hospital* (1760), 2 Bur. 1053; 1 W. B. 249. Servants of this charity not rateable because not occupying distinct apartments.
R. v. *Mathews*, (1777) Cald. 1. Keeper of a lodge in Windsor Park, and two acres of land, appointed by the ranger, rateable as ranger. "When a servant," said Mansfield, C. J., "occupies a house and two acres of land, whether he pays for them by a rent or by service it can make no difference as to his being rated, he is equally liable." This test is not now employed.	*R.* v. *Field* (1794), 5 T. R. 587. Person employed at annual wages as superintendent of a philanthropic society with no distinct apartments in the house except a bedroom; not occupier of the house. The question before the Court was whether she was the occupier of the whole, but the reasoning was opposed to her being the occupier of any part.
Bute v. *Grindall* (1786), 1 T. R. 338. The ranger of Richmond Park, rateable as beneficial occupier of certain enclosed lands yielding profit to him.	*R.* v. *Tynemouth* (1810), 12 East, 46. The occupation of a lighthouse by a servant placed there to look after the light in consideration of a salary, is the occupation of his master, who is rateable.
R. v. *Melkridge* (1787), 1 T. R. 598. Person employed as herd by several persons having a right of common and permitted by them to occupy a tenement of £10 a-year as a reward for his services; settlement by occupation.	*Bertie* v. *Beaumont* (1812), 16 East, 33. A servant from week to week put by his master into possession of a cottage divided into two parts, one occupied by the servant, the other occupied by Mrs. D., who paid rent. The servant paid no rent, but his wages were less by £5 in the year on account of this circumstance.
R. v. *Terrott* (1803), 3 East, 506. A commanding officer having certain apartments allotted to him and his family in barracks for his residence, held to be rateable to the poor. The ground of decision as put in Lord Ellenborough's judgment, is that the officer, unlike a private soldier, who had no accommodation beyond what was required for sleeping, eating, and the like, "had a degree of personal benefit, and accommodation from the property enjoyed by him, *ultra* the mere public use of the thing; and which excess of personal benefit and accommodation *ultra* the public use	*R.* v. *Cheshunt* (1818), 1 B. & Ald. 473. A labourer employed by the Board of Ordnance. He previously occupied a house at a rent of £7. The house was purchased by the Board. He continued to reside in part of the house at a weekly rent of 2*s.*, which was deducted from his wages. No occupation as tenant.
	R. v. *Bardwell* (1823), 2 B. & C. 161, and 2 D. & R. M. C. 53. Pauper hired for a year as a shepherd. He was to receive a house and a garden rent free, 7*s.* as wages a week, and the goings of thirty sheep with his

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may be considered as so much of salary and emolument annexed to the office."

R. v. *Minster* (1814), 3 M. & S. 276. A master found his bailiff, a servant in receipt of weekly wages, a house and pasturage for two cows on the master's land, not connected with the service or necessary for the convenient performance of it; the servant had a distinct interest in the pasturage of the two cows.

Doe dem. Nicholl v. *McKaeg* (1830), 10 B. & C. 721. Defendant, minister of a dissenting congregation. He was put in possession of a chapel and dwelling-house by lessors, in whom the legal estate was vested in trust to permit the chapel to be used for the purpose of religious worship. Being a tenant at will after demand for possession, he was not entitled to a reasonable term for the purpose of removing his goods. "If the tenant," Lord Tenterden observed, "after the determination of his tenancy in this case, by a demand of possession, had entered on the premises for the sole purpose of removing his goods, and had continued there no longer than was necessary for that purpose, and did not exclude the landlord, perhaps he might not have been a trespasser." See *Doe dem. Jones* v. *Jones* (1830), 10 B. & C. 718, and *Lake* v. *Campbell* (1862), 5 L. T. N. S. 582.

R. v. *Wall Lynn* (1838), 8 A. & E. 379. R., a brewer, engaged L., as his clerk, at a yearly salary, and agreed to permit him to occupy a certain house as residence, free of rent, rates, and taxes. Another clerk was to be lodged in the same house. L. rateable; L. being an "independent holder," and having absolute dominion, and the house not being the master's.

R. v. *Bishopton* (1839), 9 A. & E. 824. Pauper resided in a

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master's flock for the more convenient performance of the pauper's duties; did not occupy the house and garden as tenant. Bayley, J., took occasion to say that *R.* v. *Minster* was "open to much observation."

Hunt v. *Colson* (1833), 3 Moore & Scott, 790. Servant, employed by Highgate Archway Company to collect tolls. He lived in the toll-house, and one shilling a week was deducted from his wages by way of rent. The company having contracted to sell the land on which the cottage stood, discharged the plaintiff from their employment and gave him notice to quit, to which he assented. Held, not a tenancy, and plaintiff could not maintain trespass for pulling down the toll-house. At Nisi Prius, Tindal, C.J., ruled that there was a tenancy, and the Court appears to have assumed that there was a tenancy before the determination of service.

Dobson v. *Jones* (1844), 5 M. & G. 112. Surgeon in Greenwich hospital, who was required to occupy rooms in the hospital; not entitled to vote as tenant. The Court observed that "the relation of landlord and tenant could not be created by the appropriation of a particular house to an officer or servant as his residence where such appropriation was made with a view not to the remuneration of the occupier, but to the interest of the employer, and to the more effectual performance of the service required from such officer or servant."

Mayhew v. *Suttle* (1854), 4 E. & B. 347; 23 L. J. Q. B. 372; Exch. Chamber, 4 E. & B. 357. Defendant, who was in possession of a certain messuage, where the sale of beer was carried on by one George Utting for defendant, agreed, in consideration of a bondsman becoming answerable for the amount of £50

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cottage, rented by a millowner for families employed in the mill. Some of the children of the former worked in it. The agreement was that 2*s.* a-week should be deducted from the children's wages as rent. The pauper worked as a husbandman. Held, that the relation of landlord and tenant existed. "There was," as Williams, J., observed, "a renting by one who was not servant."	in default of payment by the plaintiff, to let the plaintiff enter into the premises and carry on therein the trade for the defendant until the agreement should be determined by the notice mentioned in the agreement. The plaintiff was to carry on business "in the place and stead in the same manner and with the same privileges as G. Utting hath heretofore done." The agreement proceeded, "whenever either of the said parties hereto shall be desirous of determining and putting an end to this agreement, he, the said F. Mayhew, shall and will, on receiving from the said G. Suttle one month's previous notice in writing of such desire, and without being paid, or requiring to be paid, any sum of money, &c., quit and deliver up to him, the said G. Suttle, the said trade or business, and the full quiet and peaceable possession of all and every of the said premises." Notwithstanding the provisions with respect to determination by notice, the Court thought that no tenancy had been created, and that the occupation was ancillary to the carrying on of the trade for the defendant.
R. v. *Ponsonby* (1841), 3 Q. B. 14; 6 Jurist, 642. The occupiers of apartments in Hampton Court, who reside there with their families and provide their own furniture, rateable.	*Clark* v. *Bury St. Edmunds* (1856), 1 C. B. N. S. 23; 26 L. J. C. P. 12. Keeper of the Guildhall at Bury St. Edmunds held to occupy house attached to it as servant because he was required to reside there for the performance of his duties.
Hughes v. *Chatham* (1843), 5 M. & G. 54; 1 Lutw. R. C. 51. A master ropemaker occupied a house in a Government dockyard. He paid no rent for it, and held it as part remuneration for his services. No part of the house was used for public purposes, and he had the exclusive control of it. The distinction to be deduced from the settlement cases, Tindal, C. J., took to be this:—If a servant is not *permitted* to occupy as a reward, in the performance of his master's contract to pay him, but required to occupy in the performance of his master's contract to serve his master, his occupation is that of his master. As nothing in the facts of the case showed that the master ropemaker was required to occupy the house for the performance of his duties, or did occupy it in order to perform them, or that the occupation was conducive to that purpose more than any other house, held that the claimant occupied the house as tenant within 2 Will. IV., c. 45, s. 27.	*R.* v. *Tiverton* (1861), 30 L. J. M. C. 79. A Wesleyan minister, who lived in a house taken by the stewards of the circuit within which he officiated, paid the rates and taxes; but they were repaid by the stewards. It appeared to be the practice of the stewards to take houses for the ministers. No settlement gained. According to Crompton, J., the minister was very much in the position of servant to the stewards. This case appears pecu-
Gambier v. *Lydford* (1854), 3 E. & B. 346. The governor of a prison rateable in respect of a coach-house and stabling within the precincts of the prison to the extent to which the occupation	

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was in excess of what was necessary for the performance of his duties. Outside the prison precincts were buildings occupied by the officers of the prison. None occupied more than was necessary for the discharge of their duties and the accommodation of their families; the dwellings were assigned to the officers by the directors, and they had no discretion as to the houses and apartments assigned to them. Held, by Campbell, C. J., and Wightman, J., that the residences outside the walls were rateable. Coleridge, J., dissented as to the latter point. It is submitted that the distinction taken between residences inside and those outside prison walls is not warranted by any of the previous decisions. See *Congreve* v. *Upton* (1864), 4 B. & S. 857; 33 L. J. M. C. 83.

Ford v. *Harington* (1869), L. R. 5 C. P. 282. Canon of a cathedral church and one of the chapter occupied a house with which the chapter could not interfere, and which the canon repaired. Held, that he occupied as canon and a corporation sole and not as one of the chapter, and that he could vote in respect of it.

Smith v. *Seghill* (1875), L. R. 10 Q. B. 422; 44 L. J. M. C. 114. S., a collier, resided in house belonging to his employers. He paid no rent; was not entitled to notice to quit, and the occupation would cease when S.'s service closed. The house was one of several which his employers filled at their discretion. It was not absolutely essential for workmen to live in those houses, though the owners preferred that the workmen should live near their work. An occupier within 32 & 33 Vict. c. 41, s. 19.

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liar. (1) The minister does not appear to have been required to reside in the house; (2) it was not the house of the stewards; (3) he actually paid the rent to the landlord. (See remarks of Willes, J., in the following case.)

White v. *Bayley* (1861), 10 C. B. N. S. 227. Plaintiff appointed librarian and storekeeper on these terms, *inter alia*: that the person to be appointed should have premises, rent and taxes free, in a good situation; that £35 per cent. should be allowed to the storekeeper on all books sold out of the shop, but not on donations or subscriptions, he making such arrangements with booksellers, agents of the society, as the committees should from time to time determine. To carry on a retail business in other New Church works and general literature for his own benefit. The society had purchased the lease, which was assigned to trustees for it. Held, that no tenancy existed. In the view of Willes, J., "no tenancy in the premises even to the extent of a tenancy at will ever did vest in the plaintiff." The agreement was one of service, and it made no difference that as a part of the remuneration he was to have liberty to carry on his own retail business. "I can quite conceive a case such as this, where the representatives of a society might go to a person having already a shop where he was carrying on business, and agree with him to become their agent for the sale of their particular publications, and to pay him a certain salary for his services, and in addition to pay the rent and taxes of the premises, and where a question might arise whether by this arrangement an interest in the shop vested in the society. The proper answer in such a case would seem to me to be that it would not."

R. v. *Spurrell* (1865), L. R.

Tenant.	Not Tenant.
	1 Q. B. 72; 35 L. J. M. C. 74 A bailiff of a farmer who occupied a cottage belonging to his master, without paying rent, in part remuneration of his services, not a "substantial householder" within 43 Eliz. c. 2, s. 1.
	Fox v. *Dalby* (1874), 10 L. R. C.P. 285. A sergeant of militia occupied as such a house close to the premises in which the arms, &c., of the corps were stored. The house was assigned to him by the commanding officer as a place to live in; and if he left it without the permission of his officer, he would be guilty of a breach of discipline. He had 2*s.* 4*d.* per week deducted out of his pay, as occupier of the house; but he would not receive the 2*s.* 4*d.* extra if he resided elsewhere. He could perform the duties required of him equally well if he were living elsewhere, which he might do with his officer's permission. Not tenant within s. 3 of 30 & 31 Vict. c. 102.

APPENDIX C.

PARTNER.

Grace v. *Smith* (1775), 2 W. Bl. 998.

Waugh v. *Carver* (1793), 2 H. Bl. 235. Two shipping agents agreed to share in certain property, the profits of their respective commissions and discounts on tradesmen's bills; held liable as partners to those with whom either contracted, though the agreement prescribed that neither should be answerable for the acts or losses of the other.

Dry v. *Boswell* (1808), 1 Camp. 329. Action by B. for work and labour in regard to the repair of a lighter. Ellenborough, C. J., directed the jury, that if R., the sole owner, and B., agreed that the *nett profits should be equally divided among them*, they were partners in the concern, so as to be liable to third parties; but not so, if the agreement were to give half the gross earnings, that being only a mode of paying wages of labour.

Ex parte Hamper (1811), 17 Ves. 403.

Cheap v. *Cramond* (1821), 4 B. & Ald. 663. Merchants in London, who became bankrupt, recommended consignments of goods to a house abroad. It was agreed that all commissions on the sales of goods recommended or "influenced" by the one house to the other should be equally divided without allowing a deduction for expenses; the bankrupts were partners *quoad hoc* with the firm abroad.

Heyhoe v. *Burge* (1850), 9 C. B. 431. A. and B. agreed "for services performed," to give to C., the defendants, one-fourth part of the clear profits arising from a contract for making a certain railway; C. liable as a partner to third persons.

NOT PARTNER.

Wilkinson v. *Frasier* (1802), 4 Esp. 182. Action by seaman for wages; contended that he was a partner on the ground that the produce of the voyage was to be divided in certain proportions; not a partner.

Hesketh v. *Blanchard* (1803), 4 East, 144. A. having neither ready-money nor credit, proposes to B., the plaintiff, that if he will order along with A., certain goods to be shipped on a joint adventure, B. shall have half of any profit for his trouble. B. ordered the goods on their joint account and afterwards paid for them; no partnership between them, though B. as a partner was liable to third persons.

R. v. *Hartley* (1807), R. & R. C. C. 139. Defendant employed to take coals from F.'s colliery and sell them; to be paid for the labour by allowing him two-thirds of the difference between the price at which he sold them and the price charged at the colliery; a servant and not a partner.

Mair v. *Glennie* (1815), 4 M. & S. 240. Mair, owner of a ship, bound on a voyage to Havannah, with a cargo belonging to him. Young, the master of the ship, was party to an agreement with Mair that Young should have in lieu of all wages, primage, &c., one-fifth share of the profit or loss of the intended voyage, and was to follow Mair's instructions.

Geddes v. *Wallace* (1820), 2 Bligh, 270. The deed of copartnery of a certain company was subscribed by Geddes, who was to have one-seventeenth share without advancing any capital. Article 3 stated that, "in the said capital stock the partners shall be interested in the

Partner.	Not Partner.
Greenham v. *Gray* (1855), 4 Irish C. L. R. 501. Agreement between plaintiff and defendant to carry on the business of cotton spinners at defendant's mill. Plaintiff to have the full control and management of mill, and to give his whole time to it; to direct all departments; to have the exclusive power of dismissing servants; to be paid for his management, &c., £150, and to receive one-fifth part of the nett profits. Plaintiff and defendant partners.	profits or loss in the following proportions . . . the said John Geddes, one seventeenth share." By an agreement referred to in the articles of copartnery, he was to receive £100 besides his seventeenth share of the profit or loss. The House of Lords, looking to the whole of the articles, and to the conduct of the parties, decided that as between him and them, he was not a partner. *Smith* v. *Watson* (1824), 2 B. & C. 401. A., a merchant, bought whalebone through B., a broker. It was agreed that, as remuneration for his trouble, B. should receive one-fourth of the profits arising from the sale, and bear an eighth proportion of the losses. Although B. might be liable to third persons, there was no partnership with A. *Pott* v. *Eyton* (1846), 3 C. B. 32. Eyton's name appeared over door of shop kept by Jones, and he received per-centage of profits; goods purchased in Eyton's name; no evidence of credit given to Eyton; not a partner as to third persons. *Rawlinson* v. *Clarke* (1846), 15 M. & W. 292. Plaintiff sold to defendant his business as a surgeon and apothecary. Plaintiff agreed to continue to reside at his place of business and to carry on the profession as before for a year, and to introduce defendant to his patients. Defendant to allow plaintiff during the year a moiety of the clear profits; the deed did not create a partnership. *Stocker* v. *Brockelbank* (1851), 3 Mac. & G. 250; 20 L. J. Ch. N. S. 401. Agreement between plaintiff and defendant that the plaintiff would serve the said "partners" as "manager," and that the plaintiff should have the conduct and management of the business, and should receive for his services such a sum as would be equal to £40 per cent. upon the nett profits; no partnership existed.

Partner.	Not Partner.
	R. v. *Wortley* (1851), 21 L. J. M. C. 44. Defendant entered into an agreement "to take charge of the glebe-land of the Rev. J. B. B. Clarke; his wife undertaking the dairy and poultry, &c., at 15*s.* a-week, till Michaelmas, 1850, and afterwards at a salary of £25 a year and a third of the clear annual profit, after all expenses of rent, rates, labour, interest on capital, &c., are paid, on a fair valuation made from Michaelmas to Michaelmas. Three months' notice on either side to be given, at the expiration of which time the cottage to be vacated by Wortley"; defendant and his master not partners *inter se*.
*	*Andrews* v. *Pugh* (1854), 24 L. J. Ch. 58. Plaintiff employed the defendant to obtain orders for him, the plaintiff allowing to the defendant a commission of 15 per cent. on the gross amount of profits. The defendant carried on the business with the plaintiff, but his name was not joined with that of the plaintiff; no partnership *inter se*.
	Cox v. *Hickman* (1860), 8 H. of L. 267. S. & S., having become embarrassed, assigned their property to trustees, and empowered them to carry on the business, and to divide the income rateably among the creditors. Held, no partnership created so as to make creditors liable to third parties.
	R. v. *Macdonald* (1861), 31 L. J. M. C. 67. Cashier and collector of a firm, received in addition to fixed salary a certain per-centage on profits; was not liable to losses, and had no control over business; a servant.
	Ross v. *Parkyns* (1875), L. R. 20 Eq. 331; 44 L. J. Ch. 610; 30 L. T. 331; 24 W. R. 5. Agreement between plaintiff and defendant to carry on underwriting business in the name of defendant; all policies, losses, and

Partner.	Not Partner.
	averages to be signed and settled by defendant, or by the plaintiff as his agent. Plaintiff to be paid or allowed a salary or sum of £150 per annum, and one-fifth of the profits; plaintiff to keep the books of accounts, he obtaining such assistance from time to time as he may find necessary, subject to the approval of the defendant; plaintiff not to bear any loss; contract, one of hiring and service and not of partnership.
	See also *Bullen* v. *Sharp* (1865), L. R. 1 C. P. 86; and *Mollwo* v. *Court of Wards* (1872), L. R. 4 P. C. 419.

APPENDIX D.

In Roman law the hiring of land, and the law of master and servant are alike treated under the head of *locatio-conductio*. Contracts for the labour and services of freemen for reward fell under the subdivisions—*locatio-conductio operarum* or *operis*. As the landlord was the *locator* of a farm and the lessee the *conductor*, so the servant was the *locator operarum*, and the master the *conductor operarum*. If a workman had to do something in respect of goods or chattels supplied to him; *e.g.*, if he had to weave materials into cloth, he was called *conductor operis*, and the owner of the materials was *locator operis*.

This highly artificial classification is maintained in systems of law which are closely connected with the Civil Law; see French *Code Civil* III., 8, i., and Pothier, *Louage*, 393. This classification is preserved in the Scotch law; and it seems to have led to the borrowing from the law of landlord and tenant of certain rules and applying them to the law of master and servant. Probably the doctrine of *tacit relocation* has been carried to a degree which would not have been done if Scotch judges had not had the decisions in regard to landlord and tenant present to their minds. This classification is to be found in some modern codes,—*e.g.*, it is found in the Code of Louisiana; see III., 9, i.—though the relation of master and servant is also dealt with under head of "Persons," I., 6.

A large number of the present varieties of contracts of service are almost unknown in a simple state of society. In early works, such as Viner's "Abridgment," almost the only contracts of work and labour treated of are contracts between master and servant. See Bacon's "Abridgment," V. 333, and Blackstone I., 14. In a more complicated society this form of contract became less important; contracts for work and labour, contracts of affreightment, or contracts of agency take its place. In one of the most recent measures of codification, the "Indian Contract Act," the relation of master and servant is not dealt with separately; it is regarded as a form of agency. In the Civil Code of the State of New York, the relation is chiefly treated of under the head of "Employment," along with factors, brokers, carriers, agents, &c.

No good seems to be gained by merging the contracts of hiring and service in contracts of letting land. There are few properties of importance common to the two contracts. Nor is it expedient to merge the former in contracts of agency. Part of the law of master and servant relates to a certain status, and may be suitably dealt with along with such conditions as guardian and ward, parent and child, husband and wife; see Bentham's "Principles of the Civil Code," vol. i. 343. This part, which in early times was the most important, still survives. Another part, which has assumed pre-eminence in modern times, belongs to the law of agency. In this book it has been found almost impossible to keep separate the contracts of hiring and service properly so called from certain contracts of work and labour. Several modern Acts of Parliament—*e.g.*, Employers' and Workmen Act, 1875, sect. 10,—make no clear distinction between the two.

APPENDIX E.

Possession by Servant.

THE subject of possession by servants has been the cause of much confusion and perplexity in criminal law. It may be expedient to give the outlines of the history and growth of the law. English lawyers had given definitions of larceny which implied wrongful gaining *possessim* of chattels; and the history of the matter is the history of a long attempt to reconcile this with the necessities of society. Bracton's definition (iii. c. 32), which is almost identical with that found in the Institutes (iv. 1), makes the offence turn on the intent—*contractatio rei alienæ fraudulenta cum animo furandi.* But it came to be understood that *trespass*, or wrongful interference with possession, was essential to felony. To Glanville (lib. x. c. 13) the question had presented itself, whether a bailee could be guilty of larceny. His decision is *a furto enim omnimodo excusatur per hoc quod initium habuerit suæ detentionis per dominum illius rei.* In the reign of Edward IV. the Courts had to consider whether goods which had been bailed could be stolen by a bailee. It was decided by all the judges of the Exchequer Chamber, except Needham, that the bailee could not be indicted for larceny: 13 Edw. IV. 9. He had, they said, "loyal possession of the goods, and had not taken them *vi et armis.*" The judges, however, decided that it was felony for a person who had a mere special use of an article—*e.g.*, of a piece of plate laid before him at a tavern—to convert it to his own use. By a legal fiction the possession was said, in the case of a bare charge, as distinguished from a general bailment, to be in the owner. (Russell, ii. 135; Hawk. P. C., I. c. 19, § 6).

When the Courts came to deal with similar offences committed by servants, which were probably in these days a common form of larceny, they resorted to fictions and refinements. In the Year Books (3 Hen. VII. 12, and 21 Hen. VII. 15) the question is discussed whether a servant who made away with his master's sheep, might be indicted for larceny. The difficulty with respect to possession was surmounted by declaring that a servant had none; though some of the authorities appear to confine this to the case of servants residing in their master's house.

1. A fresh difficulty, however, arose. A servant may be virtually a bailee; you may give him your jewels to keep for you; you may send him with cattle to market to sell. If he makes away with these, can he be convicted of larceny? The Courts were embarrassed by their former decisions with respect to bailees; and servants appear to have stolen with impunity articles put into their charge. The 21 Hen. VIII., c. 7, was in consequence passed. This statute made it felony for servants to steal or convert to their own use contrary to the trust and confidence reposed in them, any caskets, jewels, money, goods, or other chattels delivered to them for safe keeping. The remedy proved incomplete. By judicial construction the statute was confined to cases in which goods had been delivered for safe keeping. To prove larceny it was necessary to prove trespass (Hawkins, P. C., I. c. 19, § 1), and this could sometimes not be done even with the exercise of the utmost subtlety. Frequent miscarriages of justice were the result. Thus, a weaver, to whom yarn had been delivered to be worked up at his house, could not be indicted for larceny,

if he misappropriated the material. (Russell on Crimes, ii. 134.) The Legislature passed a series of statutes specially dealing with such offences. Servants who made away with chattels given to them on behalf of their masters were, as a rule, not punishable. Yet acting upon puzzling refinements, the criminal law punished a servant who had "determined his original, lawful, and exclusive possession."

In consequence of a startling decision that a banker's clerk who had appropriated to his own use notes paid across the counter to a customer's account could not be punished, the 39 Geo. III., c. 85, was passed, and it was made theft for a servant or clerk to embezzle money or goods received or taken into possession, "for or in the name, or on the account of his master." The cases on this subject, which involve many subtle distinctions, will be found in Russell on Crimes, vol. ii. The present law on the subject is contained in 24 & 25 Vict., c. 96. The 67th section states, that "whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three (now five) years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping." By section 68 it is enacted that, "whosoever being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security, which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed, and being convicted thereof shall be liable, at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years, and not less than three (now five) years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping." By section 72 of the same Act, it is enacted that a person indicted for embezzlement may be convicted of larceny or *vice versâ*, if it be proved that he ought to have been indicted of larceny. Notwithstanding these amendments, the law is still disfigured by embarrassing subtleties. See *R.* v. *Prince* (1868), L. R. 1 C. C. 150, 38 L. J. M. C. 8, as to distinction between servants having general authority and those having limited authority.

2. As against a wrongdoer mere possession gave a right. In the United States the Courts have held that goods stolen from a thief may be described either as goods of the true owner or of the thief. Bishop's Criminal Law, ii. s. 801.

3. The chief writ by which civil redress was obtained in ancient times was a writ of trespass, a missive calling upon the defendant to answer a charge that he had done a wrong *vi et armis*. It implied, no doubt, that the plaintiff had been disturbed in the possession of his property; but owing to the absence of other remedies—no action on the case is mentioned in the books until the reign of Edw. III., 22, Ass. 41,—the

action of trespass was frequently used in circumstances to which it was not obviously applicable. As late as the reign of Elizabeth it was still undecided whether a master could maintain trespass against a servant for taking and carrying away his goods which were in the custody of the servant, who was employed in his master's shop. The Court decided in *Bloss* v. *Holman*, Owen 52, that trespass lay in these circumstances. See as to master's possession, *Hall* v. *Davis* (1825), 2 C. & P. 33. On the other hand, as against a mere wrongdoer, a servant had such possession as enabled him to maintain an action of trespass. (Chitty's Pleading, i. 196.)

4. For many other purposes the possession of the servant is that of the master. Thus in bankruptcy it is held that goods which are in the possession of a servant are within the order and disposition of his master, and as such pass to his creditors. This is illustrated by *Hoggard* v. *Mackenzie* (1858), 25 Beav. 493. A Scotch firm established a branch in London, which was wholly conducted by an agent and manager at a fixed salary. It was agreed that he was to have a general lien on all goods consigned to him for bills accepted by him for the firm. The firm having become bankrupt, it was held that the goods passed to the assignees unaffected by the lien. See, however, *Ex parte Hidden, Re Hooper*, decided by Commissioner Fane in 1860 (3 L. T. N. S. 386). When a son had possession of certain goods as the servant of his father, and for the purpose of carrying on business for his father's benefit only, it was held that the goods did not pass to the son's assignees under the 21 James I., c. 19 ; *Stafford* v. *Clark* (1823), 1 C. & P. 24. See the curious case, *Jackson* v. *Irvin* (1809), 2 Camp. 48, where a warrant under a *fi. fa.* against a person was directed to his servant and another person as special bailiffs, and *Ex parte Majoribanks*, De Gex (1847), 466, as to the effect of joint possession of goods by servants of bankrupt and owner of goods.

CHAPTER IV.

PARTIES TO THE CONTRACT.

Any one who is of the age of twenty-one, and is under no legal or natural disability, may make either as master or servant a valid contract of hiring and service.

This proposition is imperfect and unsatisfactory: but it is impossible to comprehend under one head the various forms of disability or qualified power of contracting, such as idiocy, infancy, coverture, &c. (*a*).

English law scarcely recognises the distinction known to and of so much importance in Roman law between *liberales operæ* and *illiberales operæ* (*b*), occupations for which no wages proper were given, and those for which they were. But there is a peculiarity with respect to counsel or barristers. The relation of client and counsel is incompatible with that of master and servant; there can be no contract of hiring between them with respect to litigation. The whole subject was reviewed by the Court of Common Pleas in *Kennedy* v. *Brown* (*c*), and the chief conclusion which was

(*a*) Smith's Master and Servant, 1; Wood's Master and Servant, 8.

(*b*) Windscheid, ii. s. 404.

(*c*) (1863) 13 C. B. N. S. 677; 9 Jur. N. S. 119; 32 L. J. C. P. 137; 11 W. R. 284; 7 L. T. N. S. 626; action on a promise, in consideration of services as counsel, held not to lie. See remarks on this case in Pollock on Contracts, 3rd ed., 638; also *Mostyn* v. *Mostyn* (1870), L. R. 5 Ch. 457, and *Robertson* v. *McDonagh*, 14 Cox, C. C. 469. As to the right of medical practitioners to sue for fees, see Medical Act of 1858, and Apothecaries Act, 55 Geo. III., c. 194; and as to the state of the law before the passing of the former Act, see *Veitch* v. *Russell* (1842), 3 Q. B. 928; 12 L. J. Q. B. 13. "The physician has a claim, usually recognised, to remuneration for his services; but he has no legal title to it." He could, however, have made a contract with respect to it.

come to was thus expressed: "We consider that a promise by a client to pay money to a counsel for his advocacy, whether made before, or during, or after the litigation, has no binding effect; and, furthermore, that the relation of counsel and client renders the parties mutually incapable of making any contract of hiring and service concerning advocacy in litigation."

A person who is under a binding contract to serve A. for a certain time, cannot enter into a binding contract with B. for the same period. "One who has contracted," says Lord Ellenborough, in *R.* v. *Norton*, "a relation which disables him from serving any other without the consent of his first master is not *sui juris*, and cannot lawfully bind himself to serve such second master" (*d*). Hence the Courts refused to admit that soldiers gained settlements by hiring and service while they were still in the employment of the Crown (*e*). In *R.* v. *Norton* (*f*) it was held that a deserter from the King's service could not be "lawfully hired" within the meaning of 3 Will. & Mary, c. 11, s. 7. But one who is not in all respects the servant of A., because he has previously entered into a binding contract with B., may be the servant of A. in such a sense that A. will be liable to him for his wages, and will be responsible to third persons for his acts.

(*d*) *R.* v. *Hindringham* (1796), 6 T. R. 557. A., an infant indentured as an apprentice to B.; during the apprenticeship he entered the navy with the consent of his master; but his articles were not delivered up. After quitting the navy, and before the expiration of the apprenticeship, he hired himself to C. Held, that A., not being *sui juris* at the time, could not enter into a legal contract. As to difference between contract with soldier and one with infant, *R.* v. *Chilleslord* (1825), 4 B. & C. 94, 100.

(*e*) *R.* v. *Beaulieu* (1814), 3 M. & S. 229. A soldier, though not "lawfully hired" within the meaning of the statute, could have recovered wages for his services. The Court refused to find such a hiring and service as would give a settlement unless the master had an absolute right to the services for the whole time. On the other hand, it was held that hiring for a year by a militiaman, if the fact of his being such were made known to the master at the time of hiring, gave a settlement; *R.* v. *Westerleigh* (1773), Burr. S. C. 753; *R.* v. *Winchcomb* (1780), 1 Doug. 391; *R.* v. *Taunton* (1829), 9 B. & C. 831; *R.* v. *St. John* (1829), 9 B. & C. 896; *R.* v. *Elmley Castle* (1832), 3 B. & Ad. 826; *R.* v. *St. Mary-at-the-Wall* (1834), 5 B. & Ad. 1023; *R.* v. *Witnesham* (1835), 2 A. & E. 648; case of member of a Volunteer corps under 44 Geo. III., c. 54.

(*f*) (1808), 9 East, 206.

The position of servants and apprentices who enlist in the army is now governed by statute. Sect. 96 of the Army Act, 1881 (44 & 45 Vict., c. 58), states that "the master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years, as follows, and not otherwise: (1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said Schedule, or to the like effect: (2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master; but if satisfied that the apprentice stated on his attestation that he was not an apprentice, may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statements, and if need be may adjourn the case for the purpose: (3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from her Majesty's service: (4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound: (5.) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice." As to servants enrolled in Militia, see Voluntary Enlistment Act of 1875, 38 & 39 Vict., c. 69, sect. 78.

In regard to seamen volunteering into the Navy, see Merchant Shipping Act, 1854, sections 214—220. By section 215,

a proportionate part of wages down to the time of entry must be paid by the master. By section 214 seamen are allowed to leave their ships to enter the Navy, and "all stipulations introduced into any agreement whereby any seaman is declared to incur any forfeiture, or be exposed to any loss in case he enters into her Majesty's naval service shall be void, and every master or owner who causes any such stipulation to be so introduced shall incur a penalty not exceeding £20" (*g*).

(*g*) See Part II., Chapter IX.

CHAPTER V.

INFANTS.

CONTRACTS of hiring and service by infants—that is, by persons who have not attained the age of twenty-one—are voidable at their option, unless they be for necessaries or for the benefit of the infants (*a*).

On coming of age an infant might, at Common Law, ratify a promise previously made by him so as to render it binding. The Legislature, however, has greatly limited the power of ratification. The Infants' Relief Act of 1874 (37 & 38 Vict., c. 62) enacts (s. 1) that, "All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void; provided always that this enactment shall not invalidate any contract into which any infant may, by any existing or future statute, or by the rules of Common Law or Equity, enter, except such as now by law are voidable." Section 2, which is of most consequence in this connection, says, "No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age." It was decided in *Coxhead*

(*a*) Coke on Litt. 78 *b*.

v. *Mullis* (*b*)—an action for breach of promise of marriage—that the second section does not exclusively apply to such contracts as are mentioned or referred to in the first section; the section extends to contracts of hiring and service.

The chief exception at Common Law to the principle, that infants' contracts do not bind them, was in the case of contracts for necessaries, which include, according to Coke's explanation, "necessary meat, drink, apparel, necessary physic, and such other necessaries, and likewise for good teaching or instruction whereby he (the infant) may profit himself afterwards," (*c*) and which need not exclude many articles popularly known as luxuries. An infant will also be bound by contracts which are to his benefit or advantage (*d*); and it is for the Court to determine whether this is the case. Contracts of hiring and service and appren-

(*b*) (1878), L. R. 3 C. P. D. 439; 47 L. J. C. P. 761; 39 L. T. 349; 27 W. R. 136; see also *Northcote* v. *Doughty* (1879), L. R. 4 C. P. D. 385; *Ex parte Kibble* (1875), L. R. 10 Ch. 373; 44 L. J. B. 63. As to what will amount to a ratification of a contract, by an infant, see *Cornwall* v. *Hawkins* (1872), 41 L. J. Ch. 435; 26 L. J. 607; 20 W. R. 653; infant entered into service of milk-seller, and covenanted not to carry on same trade; and, after coming of age, he continued in the same service for eighteen months without repudiating his promise. Held, that this amounted to ratification. In *Birkin* v. *Forth* (1875), 33 L. T. 532, it was held that a minor, who agreed on the 11th Dec., 1871, to serve for five years as a warehouseman, and who having attained the age of 21 in April, 1873, continued in the service of his employers, did not ratify his agreement by writing on the 17th of Jan., 1874 a letter saying that he would give up his situation in twenty-eight days. Probably the decision turned more on the fact that the Court relied on *Harmer* v. *Killing* (1804), 5 Esp. 102, which shows that a promise to bind as a ratification must be given voluntarily by a minor, and with full knowledge that he was released.

(*c*) Coke Litt. 172*a*. See Lord Mansfield's judgment in *Zouch* v. *Parsons* (1765), 3 Bur. 1801; Bacon's Abridg. "Infancy," I., 3, 360; *Skrine* v. *Gordon* (1875), 9 Ir. C. L. 479; *Hill* v. *Arbon* (1876), 34 L. T. 125; *Hart* v. *Prater* (1837), 1 Jur. 623 (riding-horse a necessary for a chemist's apothecary, who was ordered by doctor to take riding exercise). As Kelly, C.B., pointed out in *Ryder* v. *Wombwell* (1868), L. R. 3 Ex. 90 (jewelled solitaires and a silver goblet necessaries for a baronet's son), "necessaries" cannot be separated from "its legal adjunct, suitable to the estate and condition of the infant."

(*d*) "And an infant shall be bounden by all acts done by him during his nonage, which acts are for his advantage, if not in some special cases; and, therefore, if an infant at the years of discretion make a bond for his necessary meats and drink, or for his necessary apparel, or for his schooling, he shall not avoid the same." Perkins, C. I. S. 14.

ticeship are *primâ facie* regarded as for the benefit of infants (*e*). An infant who has bound himself as apprentice to one master cannot before the expiration of the period of service transfer his services to another (*f*). But if a contract of hiring and service between a minor and a person of full age be inequitable and prejudicial to the former it will not bind him (*g*). Thus a contract of hiring and service which subjects an infant to a penalty or forfeiture will not be binding (*h*).

There is no reason why an infant should not be a master (*i*).

(*e*) Pollock on Contracts, p. 65 of 3rd ed.

(*f*) *R.* v. *Arundel* (1816), 5 M. & S. 257; *R.* v. *Chillesford* (1825), 4 B. & C. 102 (infant who enters into a contract of apprenticeship will be liable to the statutory regulations applicable to master and servant); *Wood* v. *Fenwick* (1842), 10 M. & W. 195: "There can be no doubt that, generally speaking, a contract for an infant to receive wages for his labour is binding upon him." In *Cooper* v. *Simmons* (1862), 31 L. J. M. C. 138, Martin, B., & Wilde, B., state that a contract of service is binding on an infant unless it be manifestly not to his advantage. Must the contract, to be binding, be manifestly to the advantage of the infant, or is it binding unless it be manifestly to the prejudice of the infant? The rule is stated in the former way in *R.* v. *Wigston* (1824), 3 B. & C. 484, and in the latter way in *Cooper* v. *Simmons*, by Wilde, B. It is submitted that the first is correct.

(*g*) *R.* v. *Lord* (1850), 12 Q. B. 757; 17 L. J. M. C. 181 (an infant bound for twelve months not to engage in any other service or business during the whole time; the master free to stop work and wages when he thought fit; the servant liable to be dismissed for misconduct or disobedience, and, in the event of dismissal, to forfeit his wages; contract held void). *Leslie* v. *Fitzpatrick* (1877), L. R. 3 Q. B. D. 229; 47 L. J. M. C. 22; 37 L. T. 461; where the Court of Queen's Bench refused to declare void a contract by which an infant undertook to serve as an iron shipbuilder for five years, at weekly wages, with a proviso that, if the employers ceased to carry on business, or found it necessary to reduce their works, or in consequence of any accident, they might terminate the contract at fourteen days' notice. "If such provisions," it was said by the Court, in a passage which seems to furnish the true rule, "were at the time common to labour contracts, or were in the then condition of the trade such as the master was reasonably justified in imposing as a just measure of protection to himself, and if the wages were a fair compensation for the services of the youth, the contract is binding, inasmuch as it was beneficial to him by securing him permanent employment and the means of maintaining himself." This seems to conflict with *Birkin* v. *Forth* (1875), 33 L. T. N. S. 532.

(*h*) Coke, Litt. 172 a.; Bacon's Abridg. "Infancy," I., 1, 356; *Ayliff* v. *Archdale*, Cro. Eliz. 920; *Russell* v. *Lee* (14 Ch. ii.), 1 Lev. 86; *Fisher* v. *Mowbray* (1807), 8 East, 330, (infant not bound by bond bearing interest); *Baylis* v. *Dineley* (1815), 3 M. & S. 477. But see *Wood* v. *Fenwick*.

(*i*) *Hands* v. *Slaney* (1800), 8 T. R. 578; *Chapple* v. *Cooper* (1844), 13 M. & W. 252, 258, where Alderson, B., held that in certain circumstances a servant would be a necessary for an infant; *R.* v. *St. Petrox* (1791), 4 T. R. 196; 2 Bott, 377, and Cald. 444.

An infant may enter into a contract of hiring and service with his father or mother (*k*). A father cannot bind his son apprentice without his consent, and the son must execute the indenture. Parish apprentices were, in virtue of a special statute, exceptions to this rule (*l*).

An infant who is apprenticed cannot be sued upon the covenants in an indenture of apprenticeship, except by the custom of London (*m*). But apprentices have been always liable to certain statutory regulations (*n*).

(*k*) *R.* v. *Chillesford* (1825), 4 B. & C. 94.

(*l*) *R.* v. *Cromford* (1806), 8 East, 25; *R.* v. *Ripon* (1808), 9 East, 295; *St. Nicholas* v. *St. Botolph* (1862), 31 L. J. M. C. 258. Compulsory apprenticeship abolished, 7 & 8 Vict. c. 101, s. 13. An infant may have his name affixed to the indenture by an agent; *R.* v. *Longnor* (1833), 4 B. & Ad. 647.

(*m*) Bacon's Abridg., "Infancy" A, 340; *Gylbert* v. *Fletcher*, Croke, Car. 179; *Jennings* v. *Pitman* (19 Jac.), Hutton, 63; *Lylly's Case* (1 Anne), 7 Mod. 16. Nor could the minor be sued at equity, 1 Eq. C., Abridg. 6. The custom of London, which was instituted for the promotion of trade, is stated in various ways. Thus, in *Burton* v. *Palmer* (11 James I.), 2 Buls. 191: "An infant within the age of fourteen years;" in *Walker* v. *Nicholson*, Croke, Eliz. 652, "Any infant above the age of twelve years;" in *Code* v. *Holmes* (21 James I.), Palmer, 361, a person bound at fourteen, if the indenture be enrolled at Guildhall; in *Hall* v. *Chandler* (22 Chas. II.), 1 Mod. 271, "Any person above fourteen years, and under twenty-one, and unmarried;" so in *Eden's Case* (1813), 2 M. & S. 226 (a return held defective because it failed to state that an apprentice was between the age of fourteen and twenty-one.) By the custom of London apprentices might be assigned. Viner's Abridg. "Apprentices," F. It is stated by Holt, C. J., in *Winton* v. *Wilkes* (4 Anne), 1 Salk. 204, that no other cities than London have such custom. See, however, T. Smith's English Guilds, 209.

(*n*) *Ex parte Davis* (1794), 5 T. R. 715, decides that an infant, on coming of age, may disaffirm a contract of apprenticeship. This case is said in *Ex parte Gill* (1806), 7 East, 376, to have been misreported. It was, however, affirmed in *Wray* v. *West* (1866), 15 L. T. 180, where it was laid down that an infant must disaffirm his indentures within a reasonable time after coming of age. In *Moore* v. *Smith* (1875), 39 J. P. 772, the Court of Queen's Bench was asked to say whether this rule was altered by the Master and Servant Act, 1867; and the Court decided that it was not. It is cited as still binding in text books; *e.g.* Leake on Contracts, 550; Smith's Mercantile Law, 56. Nothing in the Employers and Workmen Act, 1875, apparently, affects the decision. It was early decided that an infant, though not liable to an action on the covenant of an indenture, was subject to the statutory regulations affecting apprentices; that is to the 5 Eliz. c. 4. The contract of apprenticeship was treated as voidable. *R.* v. *St. Nicholas*, Bur. Sc. 91. What more unequivocal way of voiding such a contract than for an apprentice to run away from his master? Yet in *R.* v. *Evered*, 16 East, 27, and *Gray* v. *Cookson* (1812), 16 East, 13, this was held not to be an efficient election so as to void indentures, and prevent the justices punishing runaway apprentices under 20 Geo. II. c. 19, s. 4. The Courts were careful not to say that, *in some*

It is stated by Blackstone that a father may "have the benefit of his children's labour while they live with him, and are maintained by him; but this is no more than he is entitled to from his apprentices or servants" (*o*). The authorities in English reports and text books on this subject are few (*p*). Blackstone cites none in support of his *dictum*, though probably it is correct. According to a series of decisions in the American Courts, the right to recover for the services of a minor is presumed to belong to the father, and he is entitled to the earnings of his children unless he has forfeited the right by misconduct or has expressly or by implication emancipated them (*q*). Accordingly payment of wages to a minor has been held to be no answer to an action by a father against an employer. "In consideration of this obligation on the part of the father to maintain his children," says Story, stating the effect of the American decisions, "the law gives him a right to all their earnings, and in case of his death the mother has the right" (*r*). This has been extended to adopted and illegitimate children. It is admitted in the American decisions,

way, an infant might not during infancy disaffirm a contract of apprenticeship. *Gray* v. *Cookson*, 16 East, p. 28; *R.* v. *Hindringham* (1796), 6 T. R. 558, and in such a manner as to make it wholly inoperative. The decision in *Ex parte Davis* was not based on any statutes affecting apprentices, and was, no doubt, intended to lay down a principle of Common Law. But is the implication that an infant cannot disaffirm before coming of age correct? Bacon's Abridg. Infancy, 1, 2, 3, and 5; *Newry, &c., Railway Co.* v. *Coombe* (1849), 3 Ex. 565; Parke, B., at p. 575; *London and North-Western Railway Co.* v. *McMichael* (1850), 5 Ex. 114; *Dublin* v. *Wicklow Railway Co.* (1852), 8 Ex. 181.

A father or friend of the apprentice was usually made a party to indentures owing to the fact that an action on the covenants would not lie against the infant. Though the old rule that infants cannot bind themselves by covenants (Platt on Covenants, p. 111) is still in force, indentures are, as the cases cited above show, binding on infants for some purposes.

(*o*) 1 Com. 453. Apart from the Poor Laws, there is no obligation on the part of a father to maintain his child; *Mortimore* v. *Wright*, 6 M. & W. 482; *Bazeley* v. *Forder* (1868), L. R. 3 Q. B. at 565; *Cooper* v. *Martin* (1803), 4 East, 76.

(*p*) The chief authority on the subject of the right of a father to a child's earnings is *Ex parte Macklin* (1755), 2 Ves. Sen. 675. (Father received child's earnings while living with him. He became bankrupt; the child sought to prove for amount received from her. Hardwicke, L. C., referred to the Commissioners to inquire how much received to the child's use.)

(*q*) Wood, p. 22.

(*r*) Contracts, sec. 142.

and presumably the same would hold good in the courts of this country, that the right does not exist where the father does not maintain his children or fulfil his duties as a father. The English authorities clearly show that emancipation will not be inferred merely from the fact that the son resides apart from his father and is in the service of another person (*s*). Thus, a son who left his father's house in Selborne, with his father's consent, and went to live in London, and entered the Metropolitan Police, was regarded as not emancipated. It is otherwise if a son enlists as a soldier and has no power to terminate his service (*t*).

(*s*) *R.* v. *Selborne* (1859), 2 E. & E. 275; *R.* v. *St. Peter's* (1769), Bur. Sc. 638.

(*t*) *R.* v. *Roach* (1795), 6 T. R. 247.

CHAPTER VI.

MARRIED WOMEN.

A MARRIED woman cannot (at Common Law) enter into a contract of hiring and service which will bind her (*a*).

If the form of such a contract were gone through it would be "altogether void," no action lying against her husband or herself for the breach of it. At Common Law an indenture purporting to bind an apprentice to a married woman was of no effect (*b*); she could not bind herself to perform the covenants. The strictness of the rule is best seen by referring to *Offley* v. *Clay* (*c*), which was an action for work done by the wife of the plaintiff for the defendants at their request. Plea of payment to the wife in full satisfaction and discharge of the cause of action; held bad on demurrer, as it did not aver that the wife was authorised to receive. Notwithstanding the passing of the Married Women's Property Act of 1870, which allowed a married woman to sue for her earnings in certain cases, it was held that she could not, without the consent of her husband, enter into a contract of service within the meaning of the Master and Servant's Act of 1867 (30 & 31 Vict. c. 141) (*d*).

(*a*) It is almost unnecessary to cite authorities for this elementary proposition. But see *Bidgood* v. *Way*, (1778), 2 W. Bl. 1236; *Marshall* v. *Rutton* (1800), 8 T. R. 545; *Lambert* v. *Atkins* (1809), 2 Camp. 272; *Liverpool Adelphi Loan Association* v. *Fairhurst* (1854), 9 Ex. 422.

(*b*) *R.* v. *Guildford* (1818), 2 Chitty, 284.

(*c*) (1840), 2 M. & G. 172; 2 Scott, N. R. 372.

(*d*) *Tomkinson* v. *West* (1875), 32 L. T. 462; *Hodgkinson* v. *Green* (1875), Davies' Labour Laws, 119; 39 J. P. 600.

As the agent of her husband, a wife may contract obligations which will bind him. The question of authority is one of fact to be determined either by evidence of express authority or by circumstances showing implied authority (*e*). If that authority exist it will be derived not from the contract of marriage, but from the acts or words of the husband, or the circumstances or conduct of the parties. When a husband and wife live together, it may be said that there is a presumption that she has power to order or hire necessaries (*f*) on behalf of her husband; for example, to hire a servant suited to her station in life. This presumption, however, is not irrebuttable; it is destroyed by showing that the authority did not in fact exist, or that it was withdrawn. Lord Justice Bramwell thus clearly states the true principle:

"If a husband turns his wife out of doors, or conducts himself so that she is obliged to leave him, it is a legal duty upon him to maintain her; and if he will not himself perform that duty, she has power to provide for herself at his expense, that is to say, she can pledge his credit for necessaries, such as food, apparel, lodging, and perhaps medicine and physic. In like manner when a wife is living with her husband, if he gives her nothing but the shelter of his house, she would have a right to provide food and apparel for herself at his expense, and he would be bound to pay for them. In cases such as these a wife has undoubtedly power to bind her husband. There may be cases in which a wife has a similar power when she and her husband are living and cohabiting together, and where the article bought upon credit is of such a kind and character that persons living in the same class of life with themselves, and having the same means, and living in the same neighbourhood, are in the habit of ordering it upon credit. Take the case of an ordinary butcher's bill; if it is not the practice of persons belonging to a particular class of life (and undoubtedly sometimes it is not), living in certain neighbourhoods in a certain style, to pay for each joint of meat at the moment of its delivery, and if the practice is to have weekly, monthly, or quarterly bills, it seems to me that the wife in such a case

(*e*) Notes to *Manby* v. *Scott*, 2 Smith, L. C., 8th ed., 445.

(*f*) See judgments of Bramwell, L. J., and Thesiger, L. J., in *Debenham* v. *Mellon* (1880), L. R. 5 Q. B. D. 394. In this case it was held that a husband who is able and willing to supply his wife with necessaries, and who has forbidden her to pledge his credit is not liable for necessaries ordered by her, even when the tradesman who supplied them had no knowledge of the prohibition.

would have a presumable authority; and if the husband means to negative it, he not only must give her notice that he withdraws it, but also must inform the tradesmen in the neighbourhood with whom she might deal that the presumable authority has been withdrawn. It seems to me that the authority exercised by a wife in a case such as I have mentioned does not spring merely out of the contract of marriage but that the same authority would exist in favour of a sister, or a housekeeper, or other person presiding over the management of the house" (*g*).

If a wife were permitted by her husband to carry on a trade or business, she would be regarded as having authorityto enter into all contracts, including those of hiring and service, necessary for the conduct of the business (*h*).

Equity has long recognised a wife's right to deal freely with her separate estate as if she were unmarried, and she might no doubt hire servants so as to bind it. Recent

(*g*) *Debenham* v. *Mellon* (1880), L. R. 5 Q. B. D. 398; *Johnston* v. *Sumner* (1858), 3 H. & N. 261; 27 L. J. Ex. 341. But see 45 & 46 Vict. c. 75. Necessaries would include hiring servants reasonably fit for her degree. Blackburn, J., in *Bazeley* v. *Forder*, L. R. 3 Q. B. 563; and *White* v. *Cuyler* (1795), 6 T. R. 176; 1 Esp. 200. The head note "if a feme covert without any authority from her husband contract with a servant by deed, the servant having performed the service stipulated may maintain assumpsit against the husband," is misleading. It appears in the report of Espinasse that the deed was used as evidence of a contract which the wife would be authorised to make.

(*h*) *Phillipson* v. *Hayter* (1870), L. R. 6 C. P. 38. As to the custom of London by which a married woman trading on her own account may be charged as a feme sole on contracts concerning her business, see *Lavie* v. *Phillips* (1765), 3 Bur. 1776. In some cases at Common Law the right of action survived to the wife. The precise rule as to this can with difficulty be extracted from the authorities. The purport of the decisions is thus stated in Chitty, Pleadings, vol. i., p. 34: "In general, the wife cannot join in any action upon a contract made *during* the marriage, as for her work and labour, goods sold, or money lent by her during that time: for the husband is entitled to her earnings, and they shall not survive to her, but go to the personal representatives of the husband, and she could have no property in the money lent or the goods sold. But when the wife can be considered as the *meritorious* cause of action, as if a bond or other contract under seal, or a promissory note, be made to her separately, or with her husband, or if she bestow her personal labour and skill in curing a wound, &c., she may join with the husband, or he may sue alone." See remarks on this passage in Bishop on Law of Married Women, vol. i., sect. 106, where the true view is said to be that if a contract is taken to the husband and wife alone with the assent of the former, the action survives to her, and she is entitled to the proceeds as against the representatives of the husband. Roper, Husband and Wife, Jacob's ed. ii., 165.

legislation has much extended the power of married women in regard to service and earnings.

20 & 21 Vict. c. 85, enacts—

Section 21. A wife deserted by her husband (*i*) may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or if resident in the country to justices in petty sessions, or in either case to the Court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of, after such desertion, against her husband or his creditors, or any person claiming under him; and such magistrate or justices or Court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings (*k*) and property acquired since the commencement of such desertion from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole:* Provided always, that every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days after the making thereof, be entered with the Registrar of the County Court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the Court, or to the magistrate or justices by whom such order was made (*l*), for the discharge thereof: Provided also, that if the husband or any creditor of or person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid: If any such order of protection be made, the wife shall during the continuance thereof (*m*) be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to

(*i*) Absence of a husband in his ordinary occupation is not desertion, *Ex parte Aldridge*, 1 S. & T. 88. The wife must not be a consenting party to the cessation of cohabitation, *Thompson* v. *Thompson* (1858), 1 S. & T. 23; 27 L. J. P. & M. 65. See also *Yeatman* v. *Yeatman* (1868), L. R. 1 P. & D. 489; 37 L. J. P. & M. 37.

(*k*) "Earnings" mean lawful earnings, and not therefore property acquired by keeping a brothel, *Mason* v. *Mitchell* (1865), 34 L. J. Ex. 68; 3 H. & C. 528.

(*l*) 27 & 28 Vict. c. 44, extends this to the magistrate for the time being acting as the successor or in the place of the magistrate who made the order of protection.

(*m*) It would appear from *Ewart* v. *Chubb* (1875), L. R. 20 Eq. 454, that evidence that the desertion is a continuing one must be produced not only at the hearing of the cause, but when it comes on for further consideration.

property (*n*) and contracts, and suing and being sued, as she would be under this Act, if she obtained a decree of judicial separation.

Section 25. In every case of a judicial separation, the wife shall from the date of the sentence, and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead; Provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

Section 26. In every case of a judicial separation, the wife shall, whilst so separated, be considered as a *feme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided, that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use: Provided also, that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

The Matrimonial Causes Act of 1878 (41 Vict., c. 19, sec. 4) states that—

"If a husband shall be convicted summarily, or otherwise, of an aggravated assault within the meaning of the statute, twenty-fourth and twenty-fifth Victoria, chapter one hundred, section forty-three, upon his wife, the Court or magistrate before whom he shall be so convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall be no longer bound to cohabit with her husband; and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty."

It is necessary to refer here also to the Married Women's Property Act of 1870 (33 & 34 Vict. c. 93) and the Amend-

(*n*) This protection extends to "those things (tools, &c.) which are necessary to make the wages and earnings which are to be protected," *Ashworth* v. *Outram* (1877), L. R. 5 Ch. D. 923; 46 L. J. Ch. 687.

ment Act of 1874 (37 and 38 Vict. c. 50). The Act of 1870 (sect. 1) was to this effect:—

The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property.

Both of the above Acts are repealed by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 22. This Act comes into operation on the 1st January, 1883 (sect. 25).

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which

shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or other-

wise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act, for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife aforesaid.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if

any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant, irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of *certiorari* or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether

before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either

before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

If a woman who is a party to a contract of service marries, the marriage will not dissolve the contract, and is no excuse for her leaving the service (*o*).

(*o*) Burn's Justice, V., 222, 30th ed.; *R.* v. *Tardebigg* (1753), Sayer, 100; S. C. Burr. Settl. Cases, 322; Chitty's General Practice, 3rd ed., 77*a*; Fitzherbert, 168, N.

CHAPTER VII.

LUNATICS.

A CONTRACT of hiring and service entered into by a lunatic is binding if the fact of insanity be not known to the person contracting with the lunatic, if the contract have been executed in whole or in part, and if the parties cannot be restored to their original position.

Some of the older authorities state that the acts of a lunatic are wholly void (*a*). But modern cases, and especially *Molton* v. *Camroux* (*b*), seem to have laid down the doctrine stated above.

A lunatic may be bound by contracts for necessaries, including services suitable to his rank and station (*c*).

(*a*) See Holt, C. J., in *Thomson* v. *Leech*, (9 Will. III.), 3 Salk. 301; see also Carth. 483, and cases cited in *Molton* v. *Camroux*.

(*b*) (1848), 2 Ex. 487; 12 Jur. 800; 18 L. J. Ex. 68; 4 Ex. 17; 18 L. J. Ex. 356. See also *Beavan* v. *McDonnell* (1854), 9 Ex. 309; 23 L. J. Ex. 94; 2 C. L. R. 474; *Hassard* v. *Smith* (1872), 6 Ir. Eq. 429. As to contract made by wife of a lunatic, see *Drew* v. *Nunn* (1879), L. R. 4 Q. B. D. 661; 48 L. J. 591; 40 L. T. N. S. 671; 27 W. R. 810. (Defendant authorised his wife to deal with the plaintiff and pledge his credit; defendant subsequently became insane; held liable for goods ordered by her during his insanity, the plaintiff not having had notice of the defendant's insanity). *Richardson* v. *Dubois* (1869), L. R. 5 Q. B. 51; 39 L. J. Q. B. 69; 21 L. T. 635; 18 W. R. 62; 10 B. & S. 830. (Action against lunatic for necessary repairs done to his house at the request of his wife; plaintiff knew of defendant's lunacy; his wife received a sufficient allowance to provide all necessaries; no cause of action.)

(*c*) *Baxter* v. *Earl of Portsmouth* (1826), 5 B. & C. 170 (tradesman supplying a lunatic with carriages suitable to his station); and see also *Brown* v. *Jodrell* (1827), 3 C. & P. 30. As to contracts with drunken persons, *Matthews* v. *Baxter* (1873), L. R. 8 Ex. 132.

CHAPTER VIII.

PARTNERS.

A PARTNER has, in the absence of any stipulation to the contrary in the articles of partnership, implied authority to hire servants for the purposes of the partnership (*a*).

One partner would have power to discharge a servant, though, not of course, against the will of his co-partners (*b*).

Joint Stock Companies.

By Schedule A. (55), the business of a company under the Companies Act, 1862, shall be managed by the directors. They may exercise all such powers of the company, as are not required by the Act or Articles of Association to be exercised by the company or by general meeting, and may do all acts (including the hiring of servants) reasonably necessary for the business of the company.

(*a*) *Beckham* v. *Drake* (1841), 9 M. & W. 79. A dormant partner held liable on a contract not signed by him, by which the plaintiff was hired for seven years. In *R.* v. *Leech* (1821), 3 Stark. 70, it was held that a servant in the employment of a firm is the servant of each of the partners.

(*b*) In Dixon on Partnership, p. 139, the law is thus stated: "As a partner may hire servants, so he may dismiss them if the other partners do not forbid; and even if they do forbid it, it is conceived that, at least as against the servant, a valid dismissal could be effected." Lindley on Partnership, vol. i. 296. In *Donaldson* v. *Williams* (1833), 1 Cr. & M. 345, it was held that one of two partners, joint tenants of a house where their business was carried on, had a right to authorise a weekly tenant to remain in the house, though the other partner had given him a week's notice to leave the service of the firm, and that it would be lawful for the servant to remain in consequence of such authority. If a servant is injured by reason of the negligence of one partner within the scope of the partnership, the other will be liable also. *Ashworth* v. *Stanwix* (1861), 30 L. J. Q. B. 183.

CHAPTER IX.

FORMATION OF THE CONTRACT.

A CONTRACT of hiring and service to be completed within a year need not be in writing; if not to be so completed, it must be in writing (*a*).

At Common Law a verbal promise for good consideration sufficed to create a contract of hiring and service; and no particular form of words was required (*b*). Indeed, it is possible and common to conclude contracts of hiring and service without expressing the whole of the terms orally; some of the terms are implied. The parties must be at one; the terms must be fixed; there must, in short, be an agreement (*c*). The payment of "earnest" or "fastening money," for example, will often suffice. The Common Law, however, is qualified by the 4th section of the Statute of Frauds, which states that "no action shall be brought upon any agreement that is not to be performed within the space of one year from the making thereof unless the agreement upon which such action shall be

(*a*) *Beeston* v. *Collyer* (1827), 4 Bing. 309; Chitty on Contracts, 11th ed. 70; 29 Car. 2, c. 3, s. 4.

(*b*) *Beeston* v. *Collyer*, see note (*a*).

(*c*) *Johnson* v. *Appleby* (1874), L. R. 9 C. P. 158; 43 L. J. C. P. 146; 30 L. T. 261; 22 W. R. 515. The plaintiff proposed to enter the service of defendant and wrote as follows: "Referring to my conversation with you, I have now the pleasure to state my willingness to enter the service of your firm for one year on trial on the following terms, viz., a list of the merchants to be regularly called on by me to be made and corrected as occasion requires. My salary for the year to be £120 &c. If the terms herein specified are in accordance with your ideas, kindly confirm them by return, and I will then prepare to enter on my duties at your warehouse on Monday morning next." The defendants wrote: "Yours of yesterday embodies the substance of our conversation and terms. If we can define some of the terms a little clearer, it might prevent mistakes; but I think we are quite agreed on all." Held that evidence of a custom to dismiss salesmen at a month's notice was admissible, there being no complete contract.

brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." "No action shall be brought," are the words of the statute, which, apparently, does not make a verbal contract absolutely void, but prevents an action being brought upon it (*d*). It has, however, been held that an agreement of hiring and service not to be performed within a year, and not committed to writing, could not be enforced by criminal process under the repealed Master and Servant Act, 1867 (*e*). The Statute of of Frauds, it may be added, only applies to contracts which on the face of them show that they cannot be performed within a year. It does not extend to cases in which it is improbable that the contract will be completed within that time, or in which the performance of the contract has, in point of fact, taken more than a year, if it might be performed within the year, and there be no stipulation to the contrary(*f*). An agreement for a longer term than a year, but liable to be determined on a contingency which may happen within the year, is within the statute, and must be in writing; for example, an agreement to let and hire a carriage for five years, but liable by custom to be determined at any time on payment of a year's hire (*g*).

(*d*) *Leroux* v. *Brown* (1852), 12 C. B. 801; 22 L. J. C. P. 1. But see Willes, J., in *Williams* v. *Wheeler* (1860), 8 C. B. N. S. 316.

(*e*) *Banks* v. *Crossland* (1874), L. R. 10 Q. B. 97; 44 L. J. M. C. 8; 32 L. T. 226; 23 W. R. 414. Lush, J. based his decision on the fact that under the 4 Geo. IV. c. 34, s. 3, a contract of service, in order to be enforced must be in writing, or the servant must have entered into service, and that the Act of 1867 extended only to cases within the old Acts. On the other hand, the Scotch Courts decided that under the above Act a complaint against a servant for failure to enter upon a contract of service might be entertained, although the contract was not in writing. *Kershaw* v. *Mitchell & Co.*, March 16, 1872, 2 Coup. 206.

(*f*) *South* v. *Strawbridge* (1846), 2 C. B. 808 (contract for the maintenance of a child "so long as the defendant shall think proper"); *Smith* v. *Neale* (1857), 2 C. B. N. S. 67; 26 L. J. C. P. 143.

(*g*) *Birch* v. *Liverpool* (1829), 9 B. & C. 392; 4 M. & R. 380; *Davey* v. *Shannon* (1879), L. R. 4 Ex. D. 81; 48 L. J. 459; 40 L. T. 628; 27 W. R. 599, (engagement for three years by a foreman tailor on the terms that if the defendant left plaintiff's employment he should not engage in the service of any one carrying, or himself carry, on business of tailor, &c., within five miles of D.; within the statute); *Cherry* v. *Heming* (1849), 4 Ex. 631; 19 L. J. Ex. 63.

The manner in which the Courts have construed the 4th section will be understood from the following illustrations :—

A. verbally agreed on the 27th of May with B. to take B. into his service as groom and gardener for a year, to commence on the 30th of June next. No action could be brought (*h*).

A. delivered to B. on the 20th of July a memorandum in writing which was unsigned, and which contained proposal, and terms as to B. entering A.'s service for a year. B. entered A.'s service on the 24th of July next, and was discharged before the end of the year. No action lay for not continuing B. in A.'s service (*i*).

Verbal agreement on the 2nd of October, 1854, between A. and B. that A. should employ B. as a traveller, until the 1st of September, 1855, and for a year thereafter, unless the employment were determined by three months' notice. An action for wrongful dismissal did not lie (*k*).

Plaintiff agreed on Sunday the 23rd of March to serve defendant for a year, commencing next day. On Monday plaintiff entered defendant's service, received £20 on account, and gave a receipt—"On account of my salary for assistance in keeping books from Lady-day, for twelve months." A jury might infer a fresh substituted contract on the 24th for a year's service (*l*).

Plaintiff entered the service of defendant under a written agreement, dated April 13th, 1871, by which he agreed to accept "the situation as foreman of the works of the defendant, &c.," on his receiving "a salary of two pounds per week and house to live in from 19th April, 1871." A weekly hiring ; and evidence of a conversation at the time of signing the contract with a view to show that a hiring for a year was intended, not admissible (*m*).

The agreement need not be in one writing ; it may be contained in several documents which refer to each other, and which do not require verbal evidence to show that they in fact refer to each other (*n*). Thus, when A., a master builder, filled in, signed, and sent to the Secretary of the Free Labour Registration Society a form containing parti-

(*h*) *Bracegirdle* v. *Heald* (1818), 1 B. & Ald. 722. "Performed," said Lord Ellenborough, means "a full, effective, and complete performance."

(*i*) *Snelling* v. *Huntingfield* (1834), 1 Cr. M. & R. 20.

(*k*) *Dobson* v. *Collins* (1856), 1 H. & N. 81.

(*l*) *Cawthorne* v. *Cordrey* (1863), 13 C. B. N. S. 406 ; 32 L. J. C. P. 152.

(*m*) *Evans* v. *Roe* (1872), L. R. 7 C. P. 138 ; 26 L. T. 70.

(*n*) *Boydell* v. *Drummond* (1809), 11 East, 142 ; *Jones* v. *Victoria Graving Dock Co.* (1877), L. R. 2 Q. B. D. 314 ; 46 L. J. Q. B. 219 ; 36 L. T. 347 ; 25 W. R. 501. Signing by both parties is not requisite. Mere initials are apparently sufficient : Leake on Contracts, p. 275.

culars as to the kind of employment and terms offered by him at S., and when B., having heard the form read over to him, signed an agreement headed "Free Labour Society," by which he stated that he had accepted employment at S., and that he would not quit the service of his employer without just cause, it was held that the documents sufficiently referred to each other, and constituted a contract in writing signed by both parties (*o*). The signature may be on one part of the memorandum or agreement; the terms of the employment may be on another; and the signature need not have been put to attest or verify the contract. A draft agreement between plaintiffs and a company was prepared; a minute of a resolution to engross, sign, seal, and execute the agreement was entered in the company's books; and at the next board meeting the chairman signed the minute thus: "Read and confirmed; Claud Hamilton." Held that, though the signature might have been intended merely to be in compliance with the requirements of the Companies Act, 1862, s. 67, it satisfied the Statute of Frauds (*p*).

The fact that an agreement otherwise within the statute has been partially performed, does not take it out of the statute (*q*). But when work has been done—whether it was

(*o*) *Crane* v. *Powell* (1868), L. R. 4 C. P. 123. A clause in articles of association that Mr. W. E. "shall be solicitor of the company, &c.," does not create a contract between the plaintiff and the company. It is *res inter alios acta*, of which the former cannot take advantage. *Eley* v. *Positive Government Security Life Assurance Co.* (1876), L. R. 1 Ex. D. 20, and 88; 45 L. J. Ex. 58, and 451; 33 L. T. 743; 34 L. T. 190; 24 W. R. 252 and 338. As to evidence of appointment of officer, *Browning* v. *Great Central Mining Co.* (1860), 5 H. & N. 856; 29 L. J. Ex. 399.

(*p*) *Jones* v. *Victoria Graving Dock Co.* (1877), L. R. 2 Q. B. D. 314; 46 L. J. Q. B. 219; 36 L. T. 347; 25 W. R. 501; *Ridgway* v. *Wharton* (1857), 6 H. of L. 238; 27 L. J. Ch. 46; *Johnson* v. *Appleby*, see note (*c*).

(*q*) *Boydell* v. *Drummond* (1809), 11 East, 142. The equitable doctrine of part performance is applicable only to sale of land, not to contracts of service. *Britain* v. *Rossiter* (1879), 48 L. J. Q. B. 362; 40 L. T. 240; 27 W. R. 482. (Agreement verbally on Saturday to serve for a year; employment to commence next Monday; plaintiff served for part of a year and then was dismissed; held that the contract was within sec. 4 of the Statute of Frauds, and that the case was not taken out of the Statute by part performance.) Here all wages due up to dismissal were paid. See Wood's Master and Servant, pp. 357—374.

done within a year or not—and an action is brought on an express or implied agreement to pay for the worth of the work actually done, the absence of writing is no defence to the action (*r*).

The statute was intended to exclude the mistakes and conflicts of evidence which arise when there is no complete written record of a contract. The object of the statute would be defeated, the evils which it was designed to avert would be introduced, if it were permissible to vary, add to or subtract from the written words by verbal testimony, and if one of the parties might say, "This was qualified by an arrangement made at the time;" or "our meaning was not completely expressed by the written agreement, and was so and so." In *Giraud* v. *Richmond* (*s*), the written agreement between a master and his clerk stated that the latter should receive a certain annual salary, increasing each year; the clerk sought to show that it was agreed that the salary should be paid quarterly; the Court would not receive evidence with this view, nor would it infer such an agreement from the fact that the salary had been paid quarterly. The consideration for the promise must be stated; if the agreement merely mentions the promise on the part of one person, without stating the consideration—*e.g.*, if it merely says, "A. B. hereby promises to be groom to C. B. for two years," it will not be enforced against A. B. (*t*).

The above principles must be taken with some reservations. Men rarely commit to writing all that they intend and agree to; they do not write out what may be taken for granted; *cela va sans dire* holds as to many things which good sense would imply. The law recognises this fact, and if a jury are of opinion that a contract was made with reference to a particular custom, it will be regarded as part of the contract. Whether such a custom exists, and whether the contract was intended to embody it, is a question of fact for the jury (*u*).

(*r*) Chitty on Contracts, 11th Ed., 57.

(*s*) (1846), 2 C. B. 835.

(*t*) *Sykes* v. *Dixon* (1839), 9 A. & E. 693. See chap. XII.

(*u*) *Abbott* v. *Bates* (1874), 43 L. J. C. P. 150, as to "necessaries" in articles of apprenticeship, *R.* v.

A term in the contract may be the rules of the establishment or workshop in which a workman is engaged (*x*), Knowledge of such rules by the servant must be shown ; *e.g.*, by proving that the rules were stuck up in a prominent place in the workshop, and that the workman could read.

It will be seen hereafter that a contract of hiring and service is *primâ facie* a contract for a year (*y*).

Contracts of Seamen.

Agreements with seamen have been the subject of the special attention of the Legislature. By section 149 of the Merchant Shipping Act of 1854, they must be in writing, except in case of ships of less than eighty tons register tonnage, exclusively employed in the coasting trade of the United Kingdom. The Merchant Shipping Acts contain many regulations with respect to the form of and particulars in agreements with seamen. They are mainly comprised in sections 146—167 of the Merchant Shipping Act of 1854 (17 & 18 Vict., c. 104), sections 7 and 8 of Act of 1873 (36 & 37 Vict., c 85), and section 26, subsection 5 of Act of 1876 (39 & 40 Vict., c. 80). These agreements are exempt from the Stamp Act (Merchant Shipping Act, 1854, section 9, and 33 & 34 Vict., c. 97, s. 3).

Under the 2 Geo. II., c. 36, which required all agreements for wages between captains and their crews to be in writing, it was decided in *White* v. *Wilson* (*z*), that a contract which did not mention, besides the money wages, the fact that a sailor was to get "the average price of a negro slave" was void. It seems probable that an agreement not in writing would now be binding (*a*).

Stoke upon Trent (1843), 5 Q. B. 303, as to custom as to holidays ; *Grant* v. *Maddox* (1846), 15 M. & W. 737 as to usage as to payment in theatrical profession.

(*x*) *Carus* v. *Eastwood* (1875), 32 L. T. 855.

(*y*) Chapter XIV.

(*z*) (1800), 2 B. & P. 116. See also *Elsworth* v. *Wollmore* (1803), 5 Esp. 84.

(*a*) Pollock and Bruce's Edition of Maude and Pollock on Shipping, vol. I., 196.

Contracts of Apprenticeship.

The 5 Eliz. c. 4, s. 25, required that the binding of apprentices should be by indenture.

As has been stated in Chapter III., where there was an expressed or implied agreement to teach a person a trade, the Courts held that a defective contract of apprenticeship—that is, a contract not sufficient to support a settlement—existed. The 54 Geo. III., c. 96, s. 2, declares that "it shall and may be lawful for any person to take or retain or become an apprentice, though not according to the provisions of the said Act; and that indentures, deeds, and agreements in writing entered into for that purpose, which would be otherwise valid and effectual, shall be valid and effectual in law, the repeal of so much of the said Act as is herein last above recited notwithstanding." The indenture must be executed by the infant (*b*).

As contracts of apprenticeship are for more than a year, they must be in writing. For the reasons stated in Chapter XI., with respect to stamps, the consideration must be stated correctly in the indenture.

The Merchant Shipping Act, 17 & 18 Vict. c. 104, s. 142, prescribes regulations as to the indentures of apprentices to the sea. By section 143, they are exempted from stamp duties (*c*).

(*b*) *R.* v. *Keynsham* (1804), 5 East, 309. As to recovering compensation for boy's labour or for board during probation, *Keene* v. *Parsons* (1819), 2 Stark. 506; *Wilkins* v. *Wells* (1825), 2 C. & P. 231; *Earratt* v. *Burghart* (1828), 3 C. & P. 381; *Phillips* v. *Jones* (1834), 1 A. & E. 333; *Harrison* v. *James* (1862), 7 H. & N. 804; 31 L. J. Ex. 248.

(*c*) Part II. Chap. IX. For precedents of indentures, see I. Crabb. 296, 302, 305, 306.

CHAPTER X.

CORPORATIONS.

CONTRACTS of hiring and service by corporations must be under seal, if the contracts be of an unusual or important character (*a*). Contracts of hiring and service, in the case of trading companies, need not be under seal.

"The seal is required," as Rolfe, B., explains in *Mayor of Ludlow* v. *Charlton* (*b*), "as authenticating the concurrence of the whole body corporate." The principle that a seal must be used in contracts is stated in unqualified terms in some ancient authorities (*c*); but it has been subjected to important exceptions, the exact limits of which are not easily determined. The following exceptions, however, seem to be established: (1.) Contracts of trading companies entered into for the purposes for which they are established need not be under seal. This exception is now clearly recognised (*d*); and it would seem that the old rule is obsolete so far as trading companies are concerned. Actions by a gas company for the supply of gas (*e*), by a colliery company (*f*) against an engineer who had agreed to erect pumping engines, by a

(*a*) See generally as to contracts of corporations, Bacon's Abridg. "Corporations," E. 3, and Viner's Abridg. "Corporations," K. The rule held good in equity as well as at law; *Winne* v. *Bampton* (1747), 3 Atk. 473.

(*b*) (1840), 6 M. & W. 815.

(*c*) For example, 13 Hen. VIII., fol. 12.

(*d*) Rolfe, B., in *Mayor of Ludlow* v. *Charlton*, see note (*b*).

(*e*) *Beverley* v. *The Lincoln Gas Co.* (1837), 6 A. & E. 829.

(*f*) *South of Ireland Colliery Co.* v. *Waddle* (1868), L. R. 3 C. P. 463; L. R. 4 C. P. 617.

trading company on a parol agreement to supply provisions for a passenger ship (*g*), and for the supply of goods against a company having power to purchase goods (*h*), were held to be maintainable, though the contracts were not under seal. "These exceptions," said Bovill, C. J., in *South of Ireland Colliery Co.* v. *Waddle* (*i*), "apply to all contracts by trading corporations entered into for the purposes for which they are incorporated."

(2.) When a contract is partly executed in such circumstances that the doctrine of part performance would apply, and is of such a nature as to be the subject of an action for specific performance, it will bind a corporation, though it be not under seal.

I have taken from Mr. Justice Lindley's judgment, in *Hunt* v. *Wimbledon Local Board* (*k*), the above description of a class of cases which it is exceedingly hard to define. It was once supposed that a clear distinction existed between executory and executed contracts, corporations being not liable under the former if the contracts were not under seal, while they were liable for the latter.

This distinction, which is approved of in *East London Waterworks* v. *Bailey* (*l*), is no longer recognised. It has been decided that a person who enters upon and pays rent for corporate property, under a demise for years, made on behalf of a corporation, but not under their corporate seal, becomes tenant from year to year (*m*); and in the view of Kelly, C. B., when a person so contracts with a corporation by parol that the contract is enforceable in equity against

(*g*) *Australian Royal Mail Co.* v. *Marzetti* (1855), 11 Ex. 228.

(*h*) *In re Contract Co.*, claim of *Ebbw Vale Co.* (1869), L. R. 8 Eq. 14.

(*i*) See note (*f*), and remarks of Lindley, J., in *Hunt* v. *Wimbledon Board*, note (*k*). In *Crampton* v. *The Varna Railway Co.* (1872), L. R. 7 Ch. Ap. 562, an action by a contractor on a contract not under seal was held not maintainable in equity. But the statutes of the company expressly provided that all contracts for more than £500 should have the common seal affixed to them.

(*k*) (1878), L. R. 3 C. P. D. 208, 214.

(*l*) (1827), 4 Bing. 283. See remarks of Martin, B., in *Dyte* v. *St. Pancras Guardians* (1872), 27 L. T. 342.

(*m*) *Ecclesiastical Commissioners* v. *Merral* (1869), L. R. 4 Ex. 162.

it, the other party is bound by any stipulation made by him in consideration of the liability so imposed upon the corporation (*n*). That the parol contracts of corporations, which have been acted upon, will sometimes be enforced in favour of and against them, seems clear from *Marshall* v. *Corporation of Queenborough* (*o*), *Steeven's Hospital* v. *Dyas* (*p*), and other authorities. But the limitations of this exception are far from certain (*q*).

(3.) Corporations of all kinds may enter into binding contracts not under seal, if they relate to matters of trifling importance or frequent occurrence, or transactions in which it would be impossible or highly inconvenient to make use of a seal (*r*).

Apparently, from the earliest times, this exception has existed. The Year Books show that the judges were not at one as to the limit or the reasons of the exception (*s*). But it has long been the unquestioned right of corporations, or at all events such of them as had heads, to engage subordinate servants without the use of a deed. Thus, a cook or a butler, or a ploughman, might be engaged by parol. In the notes below will be found the chief instances in which the question has been considered with respect to hiring and service (*t*).

Unions and Guardians of Poor.

By the 5 & 6 Will. IV., c. 69, s. 7, and 5 & 6 Vict., c. 57, s. 16, Guardians of the Poor are made corporations. They are

(*n*) S. C. at p. 166.

(*o*) (1823), 1 Sim. & St. 520.

(*p*) (1863), 15 Ir. Ch. 405.

(*q*) See judgment of Bramwell, L. J., and Brett, L. J., in *Hunt* v. *Wimbledon Local Board* (1878), L. R. 4 C. P. D. 48.

(*r*) This is recognised in many cases; for example, *Mayor of Ludlow* v. *Charlton* (1840), 6 M. & W. 815.

(*s*) In 4 Hen. VII. f. 6. The reason given by Townsend, J., is "these things do not require to be by deed, for otherwise there would be many deeds." In 4 Hen. VII. f. 17, and 7 Hen. VII. f. 9, the rule is justified in the case of the employment of servants, "because there is nothing divested out of their (the corporation's) possession." See also *Horn* v. *Ivy*, 1 Ventris, 47.

(*t*) Perhaps there ought to be another division including cases of utility amounting to necessity. See Wightman, J., in *Clarke* v. *Cuckfield Union* (1852), 21 L. J. Q. B. 349.

liable on all contracts of trifling consequence, and of frequent occurrence, whether under seal or not, as is illustrated by *Clarke* v. *The Cuckfield Union* (*u*), and *Nicholson* v. *The Bradfield Union* (*x*); but all contracts of importance, or of an unusual character, should be under seal. Claims for making a plan of the parishes of a union (*y*), have been disallowed when the contracts were not under seal (*z*).

Municipal Corporations.

They are not, like trading companies, wholly exempt from the operation of the rule of common law, that contracts of corporations must be under seal. They may, no doubt, engage by parol a door-keeper, for example, or enter into a binding contract for some unimportant purpose, or relating to a matter of constant occurrence; but the authorities cited below show that

(*u*) (1852), 21 L. J. Q. B. 349. Contracts with tradesmen not under seal to put up certain water-closets in connection with workhouse; guardians liable.

(*x*) (1866), L. R. 1 Q. B. 620; 35 L. J. Q. B. 176. Defendants held liable for price of coals supplied by plaintiff under contract not under seal.

(*y*) *Paine* v. *The Strand Union* (1846), 8 Q. B. 326; 15 L. J. M. C. 89; 10 Jur. 308.

(*z*) The other chief cases on the subject are these: *Sanders* v. *St. Neots Union* (1846), 8 Q. B. 810; 15 L. J. M. C. 104. (Action lies for iron gates supplied to defendants and accepted, though contract not under seal.) *Lamprell* v. *Billericay Union* (1849), 3 Ex. 283; 18 L. J. Ex. 282. (Action for extra work by a builder; defendants not liable, the order not being under seal.) *Smart* v. *The West Ham Union* (1855 and 1856), 24 L. J. Ex. 201; 11 Ex. 867. (Guardians appointed plaintiff collector of poor rates, not under seal, to be paid by a certain poundage; action for unpaid poundage not maintainable.) *Haigh* v. *The North Bierley Union* (1858), 28 L. J. Q. B. 62; E. B. & E. 873. (Accountant employed by guardians to audit accounts of the Union; held that plaintiff could recover for his services, the work being incidental to the purposes for which the corporation was created.) *Dyte* v. *St. Pancras Guardians* (1872) 27 L. T. 342. (Resolution passed by Infirmary Committee, and approved by defendants also by resolution, that plaintiff be appointed medical officer for three months; plaintiff entered upon his duties, and performed them for three months; contract not under seal; no action lay.) Some of the reasons given, *e.g.*, the reasons given by Martin, B., seem not sustainable. *Austin* v. *Bethnal Green Union* (1874), L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. 807; 22 W. R. 406. (Appointment of a clerk to workhouse; no action lay, because appointment not under seal.)

they cannot appoint a solicitor, or conclude any other contract of a special and unusual character, without employing the corporate seal (*a*).

Local Boards and Urban Authorities.

The 38 & 39 Vict. c. 55, s. 174, enacts that with respect to contracts made by an urban authority under this Act, the following regulations should be observed, viz.:—"(1.) Every contract made by an urban authority whereof the value or amount exceeds £50 shall be in writing and sealed with the common seal of such authority: (2.) Every such contract shall specify the work materials matters or things to be furnished had or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid, in case the terms of the contract are not duly performed: (3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing," &c., as to the probable expenses and annual repairs: (4.) "Before any con-

(*a*) *Mayor of Ludlow* v. *Charlton* (1840), 6 M. & W. 815; *Arnold* v. *Mayor of Poole* (1842), 4 M. & G. 860. (An attorney could not succeed in an action for work and labour in opposing certain bills in parliament in pursuance of instructions from mayor and members of town council, the contract not being under seal.) But see *Faviell* v. *E. C. R. Co.* (1848), 2 Ex. 344; 17 L. J. Ex. 223; *R.* v. *Mayor of Stamford* (1844), 6 Q. B. 433. (Resolution to increase town clerk's salary in lieu of compensation: such a contract must be under seal.) *R.* v. *Lichfield* (1843), 4 Q. B. 893. (A resolution of the town council sufficient authority to warrant payment of costs to attorney.) *Smith* v. *Cartwright* (1851), 6 Ex. 927; 20 L. J. Ex. 401. (Plaintiff sued as coal meter of King's Lynn. His appointment not under seal, but evidence of it by entry in books of the corporation; held that, not being a servant but an officer of the corporation, he could not be appointed without deed.) See, however, *Thames Haven Co.* v. *Hall* (1843), 5 M. & G. 274, and *R.* v. *Justices of Cumberland* (1847), 17 L. J. Q. B. 102; *Mayor of Kidderminster* v. *Hardwick* (1873), L. R. 9 Ex. 13. (Contract by plaintiffs letting certain tolls, not under seal; not binding on defendant, the highest bidder.) *Clemenshaw* v. *Corporation of Dublin* (1875), 10 Irish C. L. 1. (Defendants employed plaintiff to promote a bill in parliament to enable defendants to purchase gas work and become vendors of gas; contract not under seal; not binding.) This last case mainly turned on a question of *ultra vires*.

tract of the value or amount of £100 or upwards is entered into by an urban authority ten days' public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same; and such authority shall require and take sufficient security for the due performance of the same: (5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed, and their successors and on all other parties thereto and their executors administrators successors or assigns to all intents and purposes," &c.

So much of this section as relates to sealing is not directory only; it is imperative. Hence, when a local board—an urban authority under the Public Health Act of 1848 and the Public Health Act of 1875—verbally directed their surveyor to employ the plaintiff, an architect, to prepare plans for new offices, it was held by the Court of Appeal, that the contract could not be enforced, owing to non-compliance with the statutory requirements; although the jury found that the local board had authorised their surveyor to procure the plans, and ratified his acts, that the new offices were necessary for the purposes of the defendants, and that the plaintiff's plans were necessary for the erection of the buildings (*b*).

Contracts by Companies under the Acts of 1862 *and* 1867.

The 37th section of the latter Act runs thus: "Contracts on behalf of any company under the principal Act may be made as follows: (that is to say); (1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing

(*b*) *Hunt* v. *Wimbledon Local Board* (1878), L. R. 4 C. P. D. 48; *Young* v. *Corporation of Leamington* (1882), 8 Q. B. D. 579.

under the common seal of the company, and such contract may be in the same manner varied or discharged. (2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged. (3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company, and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be."

Companies under the Companies Clauses Act.

The 8 & 9 Vict., c. 16, s. 97, enacts as follows:—"With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee (see section 95) or the directors, may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same: With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee, or any two of them, or any two of the directors, and in the same manner may vary or discharge the same: With respect

to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same" (*c*).

(*c*) See *Bill* v. *Darenth Valley Railway Co.* (1856), 1 H. & N. 305; 26 L. J. Ex. 81, as to secretary suing for salary which had not been determined at a general meeting in accordance with the 91st section.

CHAPTER XI.

STAMPS.

AGREEMENTS for the hire of labourers, artificers, "manufacturers," menial servants, and sailors coasting from port to port in the United Kingdom do not require to be stamped (*a*).

Agreements, as a rule, require to be stamped; and no document, letter, or contract, can be admitted in evidence

(*a*) Agreements with seamen made in forms sanctioned by the Board of Trade are also exempt from stamp duty, 17 & 18 Vict. c. 104, ss. 9, 149. *R.* v. *St. Paul's, Bedford* (1795), 6 T. R. 452. (An apprentice not within the exemption.) *Dakin* v. *Watson* (1841), 2 Cr. & Dix, 224. (Quoted in Tilsley on the Stamp Acts, p. 45; a clerk not within exception.) *Wilson* v. *Zulueta* (1849), 14 Q. B. 405; 19 L. J. Q. B. 49. (A stoker or fireman on a steamship, who was bound to obey the orders of the engineers, held to be a labourer or artificer.) *R.* v. *Wortley* (1851), 21 L. J. M. C. 44; 15 Jur. 1137; 2 Den. C. C. 333. (Man employed to look after glebe land, his wife undertaking the care of the dairy and poultry; a labourer.) *Bishop* v. *Letts* (1858), 1 F. & F. 401. (Overseer in a printing office an artificer.) I am not aware of any decision explaining what is meant by "hire of any manufacturer," nor do I know what it means. There have been many discussions as to whether a contract was for the sale of goods or for work or labour. This question has already been considered with reference to the Statute of Frauds. Here may be also cited, *Pinner* v. *Arnold* (1835), 2 C. M. & R. 613. (Agreement between plaintiff, a pressmaker, and defendant, copperplate printers, to make an eagle press; the agreement within the third exemption.) *Hughes* v. *Budd* (1840), 8 Dowl. 478. (Agreement by plaintiff to quarry a sufficient quantity of stone at C. to complete a dry wall: not within the exemption, and plaintiff unable to recover, though the defendant had had the benefit of the work.) *Chanter* v. *Dickenson* (1843), 5 M. & G. 253. (Memorandum as follows: "Send me a licence to use two of Chanter & Co.'s patent furnaces, to be supplied to a singe plate and cloth boiler, for which I agree to pay Mr. Chanter or his order as ag., £25 as a patent right, and which is to include iron-works, fire-bricks, and labour; engineers' or furnace-builders' time to superintend or fix the above order, to be paid 6*s.* per day, &c."; not within the exemption.) See also *Poulton* v. *Wilson* (1858), 1 F. & F. 403. (A contract for hire of a servant, &c., may be mixed up with a contract for some other purpose, and in this case it will be necessary to determine what is the primary object.) *Smith* v. *Cator* (1819), 2 B. & Ald. 778.

unless it be stamped. The schedule to the Stamp Act of 1870, 33 & 34 Vict., c. 97, exempts:—(1.) Agreement or memorandum the matter whereof is not of the value of £5. (2.) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant. (3.) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise. (4.) Agreement or memorandum made between the masters and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

These exceptions are taken from the Stamp Act, the 55 Geo. III., c. 184, and the decisions upon that statute illustrate the later Act. The chief of them are stated below.

The Stamp Act (33 & 34 Vict. c. 97, s. 39) of 1870 states that—

Every writing relating to the service or tuition of any apprentice (*b*), clerk, or servant placed with any master to learn any profession,

(*b*) As to what are contracts of apprenticeship, see chap. III. The following are some of the chief decisions with respect to duties payable on indentures of apprenticeship: *R.* v. *Louth* (1828), 8 B. & C. 247. (An indenture to two masters to serve them consecutively in two distinct trades for periods of four and three years, requires only one stamp.) *R.* v. *Ide* (1831), 2 B. & Ad. 867. (Consideration for assignment of a parish apprentice need not be set out.) *R.* v. *Church Hulme* (1831), 5 B. & Ad. 1029 *b*. (An indenture must be stamped with the *ad-valorem* duty within the time prescribed by 8 Ann, c. 9, ss. 36, 37, and 38.) *Morris* v. *Cox* (1841), 2 M. & G. 659; 5 Jur. 367. (An assignment with new terms inserted does not require new stamp.)

Consideration — Valid.—*R.* v. *Walton* (1790), 3 T. R. 515. (Apprentice to provide himself meat, drink &c.; the master covenanted to make weekly payments to apprentice; the justices not having found that the payments were not equivalent, no additional duty payable.) *R.* v. *St. Petrox* (1791), 4 T. R. 196. (Payment to master's mother not mentioned in indenture.) *R.* v. *Leighton* (1792), 4 T. R. 732. (No duty payable when meat, drink, lodging, clothes and washing provided for apprentice and no money given to master.) Also *R.* v. *Portsea* (1776), Bur. S. C. 834; *R.* v. *Wantage* (1801), 1 East, 601. (No duty when master stipulates for part of apprentice's wages, all of which belong to the master in the absence of agreement.) *R.* v. *Aylesbury* (1832), 3 B. & Ad. 569. (Indenture not liable to duty when the master covenanted to find the apprentice necessaries, and the father of the apprentice agreed before the execution of the indenture to find the apprentice clothing and washing.) *R.* v. *Bradford* (1813), 1 M. & S. 151. (No *ad-valorem* duty payable when no premium payable, and the apprentice covenanted to allow his master 2*s*. a week, and the apprentice was to have wages and to provide for himself.) *R.* v. *Low* (1829), 3 C. & P. 620. (Not the exact sum originally agreed to be paid, but the sum actually paid, inserted in the indenture.) *R.* v.

trade, or employment (except articles of clerkship to attorneys and others hereby specifically charged with duty), is to be deemed an instrument of apprenticeship.

Section 40. The full sum of money, and the value of any other matter or thing, paid, given, or assigned, or secured to be paid, given, or assigned, to or for the benefit of the master with or in respect of any apprentice, clerk, or servant (not being a person bound to serve in order to admission in any court), is to be fully and truly set forth in an instrument of apprenticeship: and if any such sum, or other matter or thing be paid, given, assigned, or secured as aforesaid, and no such instrument be made, or if any instrument be made and such sum, or the value of such other matter or thing, be not set forth therein as aforesaid, the master, and also the apprentice himself, if of full age, and any other person being a party to the contract, or by whom any such sum, or other matter

Bourton (1829), 9 B. & C. 872; 4 M. & R. 631. (Undertaking given to master by a married woman without knowledge of her husband when binding her son, that £10 should be inserted in indenture as premium; a private promise that the master should receive more and a further payment; the indenture valid, there being no valid contract to pay more than £10.) *R.* v. *Harrington* (1836), 4 A. & E. 618; 6 N. & M. 165. (Indenture not void by the insertion of wrong date.) *Shepherd* v. *Hall* (1812), 3 Camp. 180. (£20 agreed; £19 19*s.* 6*d.*, actually paid and inserted as consideration.) *Hankins* v. *Clutterbuck* (1848), 2 C. & K. 811. (A sum of £99 19*s.* paid, and stated to be the consideration. Simultaneously with indenture a written agreement between master and apprentice's uncle that £150 more should be paid for the board of the apprentice, and £50 actually paid. Held consideration truly inserted.)

Not Valid. — *R.* v. *Baildon* (1832), 3 B. & Ad. 427. (Consideration stated in indenture £4, private promise by mother to pay, and actual payment of £1 additional; indenture void.) *R.* v. *Amersham* (1836), 6 N. & M. 12; 4 A. & E. 508; 1 H. & W. 694. (Indenture stated consideration of £10 to be paid by the trustees of a charity. Previous to the agreement a promise by the apprentice's grandfather, who was no party to the deed, to pay an additional £25; £15 actually paid, apparently without the knowledge of trustees.)

Recovery of Premium. — *Stokes* v. *Twitchen* (1818), 8 Taunt. 492; 2 Moore, 538. (Plaintiff executed indenture of apprenticeship of her son, and paid premium. Indenture did not state consideration, and was not stamped. Held that the plaintiff could not recover the consideration paid, she having notice of the fraud on the revenue.) *Westlake* v. *Adams* (1858), 5 C. B. N. S. 248; 27 L. J. C. P. 271; 4 Jur. N. S. 1021. (Action upon I.O.U.; defendant on the apprenticing of his son to plaintiff by a charitable society agreed to give to plaintiff, in addition to a premium to be paid by the society, four I.O.U.'s for £5 each, payable at intervals of a year. After the expiration of term of apprenticeship plaintiff sued on the I.O.U.'s. The action maintainable, though indenture void.) *Mann* v. *Lent* (1830), 10 B. & C. 877; at N. P. (1828), 1 M. & M. 240. (Action by indorsee of bill of exchange against acceptor. The bill was given for premium £30, which the latter agreed to pay as premium of his son. After the apprentice had served five months it was discovered the stamp was insufficient, and the apprentice left his master's service. Held no answer to action by payee against acceptor.) See also *Jackson* v. *Warwick* (1797), 7 T. R. 121; *Macleod* v. *Sinclair* (1738), M. 585; *Donaldson* v. *Fulton*, M. 587.

or thing, is paid, given, assigned, or secured, shall forfeit the sum of twenty pounds, and the contract, and the instrument (if any) containing the same, shall be null and void.

The same Act (Schedule of Duties) imposes a duty, where there is no premium or consideration, of 2*s.* 6*d.* "In any other case—for every £5, and also for any fractional part of £5, of the amount or value of the premium or consideration, 5*s.*"

EXEMPTIONS.

"(1.) Instrument relating to any poor child apprenticed by, or at the sole charge of, any parish or township, or by or at the sole charge of, any public charity, or pursuant to any Act for the regulation of parish apprentices.

"(2.) Instrument of apprenticeship in Ireland, where the value of the premium or consideration does not exceed £10."

See also 17 & 18 Vict., c. 104, s. 143, as to indentures of apprenticeship to the sea service.

By the Customs and Revenue Act of 1869 (32 & 33 Vict., c. 14, s. 18), a duty of 15*s.* is payable "for every male servant."

According to sect. 19, sub-sect. 3, "the term 'male servant' means and includes any male servant employed either wholly or partially in any of the following capacities; that is to say, *maître d'hôtel*, house steward, master of the horse, groom of the chambers, *valet de chambre*, butler, under butler, clerk of the kitchen, confectioner, cook, house porter, footman, page, waiter, coachman, groom, postilion, stable-boy or helper in the stables, gardener, under gardener, park-keeper, game-keeper, under game-keeper, huntsman and whipper-in, or in any capacity involving the duties of any of the above descriptions of servants, by whatever style the person acting in such capacity may be called: (4.) Every person who shall furnish any male servant on hire shall, for the purposes of this Act, be deemed to be the employer of such servant: (5.) It shall not be necessary for licences to be taken out in the following cases, viz.:—By any officer in Her Majesty's army or navy for any servant, being a soldier in the army or a person actually borne upon the books of a ship, and employed by such officer in accordance with the regulations of Her Majesty's service: By any licensed retailer of exciseable liquors or licensed keeper of a refreshment house for any servant employed by him solely for the purposes of his business, such servant being the only male servant employed by him: By any person who shall have made entry of his premises in accordance with section twenty-eight of this Act for any servant employed by him at such premises in the course of his

trade, other than a servant employed to drive a carriage with any horse let to hire for any period exceeding twenty-eight days ; provided that such person shall have complied with all the provisions contained in the said section : By any person duly licensed by proper authority to keep or use any public stage or hackney carriage for any servant necessarily employed by him to drive such stage or hackney carriage, or in the care of such stage or hackney carriage, or of the horse or horses kept and used by him to draw the same." The Act imposes a penalty of £20 for not taking out a licence (sect. 27). Every person who shall furnish a servant on hire is required to enter in a book the name of the servant and the name and address of the person hiring such servant (sect. 29).

The Court of Exchequer, in *Spencer* v. *Sheerman* (*d*), decided that hotel-keepers must take out licences for waiters engaged only for two or three weeks. But the 36 & 37 Vict., c. 18, s. 4, annuls the effect of this, by enacting that it shall not be necessary for a licence to be taken out under 32 & 33 Vict., c. 14, by any hotel-keeper, retailer of intoxicating liquor, or refreshment-house keeper, for any servant wholly employed by him for the purposes of his business.

(*d*) (1871) 23 L. T. 873. See also 39 Vict. c. 16, s. 5, as to "male servant."

CHAPTER XII.

THE CONSIDERATION.

AGREEMENTS of hiring and service require consideration in order that they may be enforced.

Mandate, that is, a gratuitous undertaking to perform services, is of much less consequence in English law, than it is in Roman law (*a*). The former has to do mainly with promises to serve for some consideration. If A. promises to serve B., and B. does or gives or promises nothing in return, no action (unless in the case of contracts under seal) lies; the maxim *ex nudo pacto non oritur actio* applies (*b*). Consideration embraces many things besides money. It will not include the ties of relationship or friendship, or merely moral duties. To support a promise it is, however, enough that there should be, to quote the judgment of the Court in *Currie* v. *Misa* (*c*), "some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other." The consideration need not be such as in fairness would be adequate; that is a matter for the parties to the agreement. The Courts will not, for example, inquire whether a servant's wages are too low, or whether the agreement of hiring is too much to the advantage of one of the parties (*d*). The consi-

(*a*) Hunter's Roman Law, 308.

(*b*) Promise by directors to work gratuitously not binding; *Lambert* v. *Buenos Ayres Co.* (1869), 18 W. R. 180. In *Dunston* v. *Imperial Gas Light Co.* (1831), 3 B. & Ad. 125, it was held that directors of a company, not being servants, but managers or governors, could recover no remuneration from the company unless by virtue of an express resolution under seal.

(*c*) (1875) L. R. 10 Ex. 162; 44 L. J. Ex. 99.

(*d*) *Hitchcock* v. *Coker* (1837), 6 A. & E. 438.

deration cannot consist of bygone transactions, unless anything was done at the request of the person making the promise (*e*). A promise made in respect of a past matter may be induced by gratitude for what has been done; the transaction is not the less, in a legal point of view, purely voluntary.

If the contract be within the Statute of Frauds, the consideration must be stated in writing (*ee*).

In many contracts of service the consideration is not expressed. The parties have in their minds certain usages. They do not state that which they assume need not be stated, and they are content to take for granted many of the terms of their agreement. Questions of difficulty frequently arise as to whether there exists a contract the consideration of which is implied or may be fairly inferred, or whether there is a mere promise which is not binding owing to the absence of consideration. In other words, is there mutuality? A., for instance, agrees to serve B. for seven years. Does B. thereby by implication agree to retain A. in his service for the same period? The current of the authorities is, as will be seen from Appendix A., far from uniform (*f*). The Courts will not allow an action where A. is not bound to serve, and B. to retain him in service. No doubt, if A. enter upon his duties, and perform certain work, the law will imply a promise by B. to pay, and A. will be entitled to recover (*g*). But when B. seeks to compel A. to fulfil an agreement to work, it must be shown that there is an obligation on the part of B. to retain him in service. Thus, in *Dunn* v. *Sayles* (*h*), the Court refused to imply a covenant to retain the plaintiff in the service of

(*e*) Leake on Contracts, 19, and authorities there cited.

(*ee*) *Wain* v. *Warlters* (1804), 5 East 10.

(*f*) There is much ambiguity as to the meaning of mutuality: Crompton, J., in *Whittle* v. *Frankland* (1862), 2 B. & S. 55. Here it is taken in the sense of mutual promises; one party makes one promise, and another makes a promise to support it. See as to want of mutuality, *Mayor of Kidderminster* v. *Hardwick* (1873), L. R. 9 Ex. 13; *Arnold* v. *Mayor of Poole* (1842), 4 M. & G. 896. See Appendix A, for chief decisions on this question.

(*g*) See *Elsee* v. *Gatward* (1793), 5 T. R. 143.

(*h*) (1844), 5 Q. B. 685.

the defendant for five years, when it was agreed by deed that the plaintiff's son should continue with the defendant as an assistant surgeon dentist for five years, and that the defendant should pay weekly wages. This decision has been much criticised; and the tendency in recent cases has been to imply a promise on the part of the master to retain "whenever there is something not expressed which it is clear to all men of ordinary intelligence and knowledge of business must either have been latent in, or palpably present to, the minds of both parties when the contract was made" (*i*). Thus, when A. agreed to serve B. for seven years on certain terms, and B. to pay his wages so long as he was so employed, it was held that B. was bound to employ A. for seven years (*k*).

While the Courts will often presume a promise to hire or retain in service, though it be not actually expressed, they will sometimes imply a right to terminate a contract of hiring or service, though no such right be expressed. Suppose that it is agreed between A. and B. that for seven years, or so long as A. shall continue to carry on business in Liverpool, A. shall be the sole agent there for the sale of B.'s coals, and that B. shall not employ any other agent there. Suppose further, that it is a term of the agreement that if A. does not sell a certain amount a year, or if B. cannot supply a certain amount a year, either party may determine the agreement; and that B. sells the colliery at the end of four years. Has B. been guilty of a breach of contract? Such were the chief facts in *Rhodes* v. *Forwood* (*l*). The House of Lords, reversing the decision of the Exchequer Chamber and affirming that of the Court of Exchequer, held that no action would lie against B. for breach of contract. The House of Lords thought that there was no implied obligation on the part of B. to carry on his business and not to sell it for seven years. It would be different if the agreement were in

(*i*) Brett, J., in *Thorn* v. *Mayor of London* (1875), L. R. 10 Ex. 123; 44 L. J. Ex. 70.

(*k*) *Hartley* v. *Cummings*. See Appendix.

(*l*) (1876), L. R. 1 Ap. 256.

effect, that the business should be carried on in order that the profits might be remuneration for advantages already received. In such circumstances, it would be obviously unfair that one party should be able to cast off all obligations to the detriment of the other. Such was the case in *McIntyre* v. *Belcher* (*m*). The plaintiff, a surgeon, sold his business to the defendant. It was agreed that he should introduce the defendant to his patients, and should receive for the first four years one fourth part of the gross earnings. In such a state of facts it was held that there was an implied covenant on the part of the defendant to continue the practice (*m*).

(*m*) The following are the chief decisions: *Burton* v. *Great Northern Ry. Co.* (1854), 9 Ex. 507. (By agreement on 1st October, 1851, plaintiff undertook to provide all waggons, horses, &c., necessary for the cartage of all grain, &c., between Hatfield and Ware, that might be presented to him, at 5*s.* a ton. "It is mutually agreed that this agreement shall continue in force for the period of twelve months from the date hereof." The company gave notice that the arrangement would cease after 1st April, 1852. Held that the only contract by defendants was to pay the stipulated price of such goods as might be presented.) *London, Leith, and Glasgow Shipping Co.* v. *Ferguson* (13th Nov., 1850), 13 D. 51; 23 Jur. 4. (An agent paid by the company by a commission on profits not presumed to be engaged from year to year; the company entitled to discontinue their trade without giving any previous notice or any compensation for the loss of his situation.) *McIntyre* v. *Belcher* (1863), 14 C. B. N. S. 654; 32 L. J. C. P. 254. (Agreement for the sale of goodwill of practice of a surgeon; the purchaser to have delivered up to him the house, and to have sold to him horse, drugs, &c., for £17 5*s.*; the vendors to pay rent and taxes up to a certain date: the purchaser to pay on condition of the premises, in respect of each of the four following years, if he should be living, at end of each respective year, one-fourth part of the receipts and earnings. Held an implied covenant by purchaser to do nothing to prevent the receipt of earnings. "If I grant a man all the apples growing upon a certain tree, and I cut down the tree, I am guilty of a breach." Willes, J.) *Stirling* v. *Maitland* (1864), 5 B. & S. 840. (An insurance company covenanted for valuable consideration with C. D., to appoint him their agent in Glasgow, together with A. B., and if A. B. should be displaced from the agency, to pay C. D. a certain sum. The company, having transferred their business to another company, were wound up and dissolved. The sole remuneration was by commission. Held that the plaintiff was "displaced" within the meaning of the contract. "I look on the law to be that, if a party enters into an arrangement which can only take effect by the continuance of certain existing state of circumstances, there is an implied engagement on his part that he shall do nothing of his own motion to put an end to that state of circumstances, under which alone the arrangement can be operative." Cockburn, C. J.) *Ex parte Maclure* (1870), L. R. 5 Ch. Ap. 737; 39 L. J. Ch. 685. (A. entered into an agreement with an insurance company to act as their agent for five years, and to transact no other insurance business without the con-

A similar question arises as to whether there is an obligation on the part of the master to find work for his servant. Where the contract of hiring merely contains an undertaking to pay stipulated wages in proportion to the work done, there is no implied obligation on the master's part to find work; though the disposition is to construe contracts of doubtful significance as to this into an agreement on the master's part to enable the servant to earn regular wages (*p*). On this subject the words of Cockburn, C.J., in *Churchward* v. *Queen* (*q*), are of value. "Where the act to be done by the party binding himself can only be done upon something of a corresponding character being done by the opposite party, you would there imply a corresponding obligation to do the things necessary for the completion of the contract." So if a man engages to work, and goes to great expense, and he is only to be paid by the measure of the work he has performed, the contract pre-supposes and implies an obligation to supply the work.

A review of the authorities as to this point discloses no definite rule. Each case must be decided on its merits. It is the duty of the Court to decide by reference to the words of the documents, and of a jury by looking at all the facts, or the practices of mankind, to say whether it was intended that work should be found, or a servant or labourer should be retained. When a servant is engaged in order to perform duties in regard to a certain definite business rather than to

sent of the company, in consideration of which he was to receive a fixed salary and 10 per cent. commission on the nett profits. Before the end of the five years the company was wound up. Agent entitled to claim for salary, but not entitled to claim against the company for loss of commission, inasmuch as the contract left the company free to determine the extent of their business.) *In re Patent Floor Cloth Co.* (1872), 41 L. J. Ch. 476; 26 L. T. N. S. 467. (Company engaged D. and G. as commercial travellers for three years; they were paid by a commission on all goods ordered through them; the company was wound up voluntarily before the end of the three years; Bacon, V.-C., held that D. and G. were entitled to compensation for commission for the unexpired portion of the three years. He distinguished the case from *Maclure's Case*, on the ground that there the servant had stipulated for salary and commission.)

(*p*) See Appendix.

(*q*) (1865), L. R. 1 Q. B. 195.

give his services in general, the duration of the contract is naturally regulated by the duration of the thing itself. Servants are for the business, and not the business for the servants. It would be improbable in most cases that it was understood that a business was kept up merely or mainly to give employment to them. When a contract is one of agency rather than of hiring and service, the natural inference would seem to be that the employer is free to terminate the relation at any time, provided the employment be not coupled with an interest.

Contracts of hiring and service will not be enforced if they are for illegal or immoral purposes.

Most contracts of hiring and service and work and labour which have been pronounced void, on the ground that they are offensive to morality, have related to sexual morality. But the principle is not confined to cases of this sort; the maxim *ex turpi causâ non oritur actio* holds good generally. The application of it to contracts of hiring and service and work and labour is simple, when the contract is on the face of it, or necessarily, immoral. Thus, in *Poplett* v. *Stockdale* (*r*), the plaintiff sued for the expense of printing an immoral book called "The Memoirs of Harriette Wilson," containing the history of a celebrated prostitute; and the Court refused to assist the plaintiff. "Every servant, to the lowest, engaged in such a transaction, is prevented from receiving compensation." Equally clear are the cases in which statute law is broken. Thus, it has been held that a printer cannot recover the cost of printing a pamphlet upon the first and last leaves of which he had not, in compliance with the 39 Geo. III., c. 79, sec. 27,

(*r*) (1825), R. & Moo. 337; 2 C. & P. 198; *Forbes* v. *Johnes* (1802), 4 Esp. 97. Assumpsit will not lie to recover the price of obscene prints. *R.* v. *Northwingfield* (1831), 1 B. & Ad. 912; *Bradshaw* v. *Hayward* (1842), Car. & M. 591.

printed his name (*s*). So, too, it was held that a person could not recover money advanced for the bringing out of Italian operas at a theatre, which he must have known was not licensed as required by 10 Geo. II., c. 28, and 28 Geo. III. c. 30 (*t*). The chief difficulty arises when the object of the contract is not necessarily or manifestly immoral. A lessor, for example, sues for the rent of lodgings which he knows are to be used for the purposes of prostitution (*u*). A washerwoman washes and does up clothes for a woman known to be a prostitute (*x*). An owner of a brougham lets it to a prostitute to enable her to ply her calling (*y*). The cases in which facts such as these have been proved, have not been consistent; but the true rule seems to be laid down by the Court of Exchequer in *Pearce* v. *Brooks* (*z*),—an action by coachmakers for the hire of a brougham let to one who used it for immoral purposes—that the plaintiff cannot recover if an article were supplied with a knowledge that it was to be used for such a purpose. The application to cases of hiring and service is obvious. No one could recover for services which he knew were given in furtherance of an immoral object.

It is impossible to enumerate here all the kinds of considerations which have been pronounced invalid as being contrary to public policy. The views of the Courts as to this have varied from time to time. Some judges have claimed

(*s*) *Bensley* v. *Bignold* (1822), 5 B. & Ald. 335. See also *Allen* v. *Rescous*, (28 Chas. II.), 2 Lev. 174. Contract "to beat J. S. out of a close." *Cope* v. *Rowlands* (1836), 2 M. & W. 149. (Unlicensed broker in London cannot recover commission.) *Harrington* v. *Victoria Graving Dock Co.* (1878), L. R. 3 Q. B. D. 549; 47 L. J. Q. B. 594. (Plaintiff, an engineer of railway company, sued the defendants upon a contract for commission in consideration of his using his influence to induce the railway company to accept the defendants' tender for the repair of ships; no right of action, though the jury found that this contract had not in fact affected the mind of the plaintiff.)

(*t*) *De Begnis* v. *Armistead* (1833), 10 Bing. 107.

(*u*) *Girardy* v. *Richardson* (1793), 1 Esp. 13.

(*x*) *Lloyd* v. *Johnson* (1798), 1 B. & P. 340.

(*y*) *Pearce* v. *Brooks* (1866), L. R. 1 Ex. 213.

(*z*) See note (*y*). See also *Waugh* v. *Morris* (1873), L. R. 8 Q. B. 202; 42 L. J. Q. B. 57. The dictum of Ellenborough, C. J., in *Bowry* v. *Bennet* (1808), 1 Camp. 348, that it must be shown not only that the plaintiff had notice of the defendant's immoral calling, but that he expected to be paid from the profits derived from it, cannot be regarded as correct.

almost uncontrolled power to decide what is public policy. Others have declined to go beyond the lines of past decisions. The doctrine has been acted upon with respect to marriage brokage bonds, contracts in restraint of trade, insurances by sailors of their wages, and sales of offices (*a*). The following are two of the most important classes bearing upon the subject of this book :—

(1.) *Contracts for sale of public offices.*

At Common Law contracts for the sale of public offices are null and void (*b*). The Legislature has also declared that such transactions are invalid; see 12 Rich. II., c. 2; 5 & 6 Edw. VI., c. 16, and 49 Geo. III., c. 126. The Act of Edward VI. enumerates a large number of public offices, and imposes (sec. 1) a penalty for the buying and selling of them. Bargains, sales, promises, bonds, agreements relating to such transactions are declared void. The 49 Geo. III., c. 126, extended the provisions of 5 & 6 Edw. VI., to all offices in the gift of the Crown (sec. 1), and declared that persons buying, selling, receiving, or paying money or rewards for offices were guilty of misdemeanors. An agreement which stated that the defendant held the office of "customer" at Carlisle in trust for the plaintiff, and by which the defendant promised to appoint such deputy as the plaintiff should nominate, and to empower him to receive the salary, was held to be illegal at Common Law, and contrary to the two first-named statutes (*c*). So, too, where the defendant promised the plaintiff, who was master joiner at His Majesty's dock-yard at Chatham, in case the defendant should succeed the plaintiff in his post, to allow him a certain annual share of the profits of the office, Lord Loughborough refused to recognise that there was a good consideration, and declared the agreement invalid (*d*). For similar reasons the Courts have declared

(*a*) For discussion of the subject, see opinions of the judges in *Egerton* v. *Brownlow* (1853), 4 H. of L. 1.

(*b*) Coke, Litt. 234a; *Corporation of Liverpool* v. *Wright* (1859), 28 L. J. Ch. 868.

(*c*) *Gayforth* v. *Fearon* (1787), 1 H. B. 328.

(*d*) *Parsons* v. *Thompson* (1790), 1 H. B. 322.

that agreements for a sale or an assignment of the profits or emoluments of such offices (*e*) are invalid. But in order to come within the principle, the offices must be really of a public character. In *Grenfell* v. *The Dean and Canons of Windsor* (*f*), it was proved that the defendant, M., a Canon of Windsor, had granted his canonry and the profits of it to the plaintiffs to secure a sum of money. There was no cure of souls; the only requirement was residence within the Castle, and attendance at chapel twenty-one days a year. Lord Langdale held the agreement to be valid; the duties not having been shown to be in any way for the benefit of the public, or the maintenance of the dignity of the sovereign (*g*).

(2.) *Contracts in restraint of trade.*

Contracts which are in general restraint of trade are void.

It will be seen from the note below, that the origin of the rule is uncertain, and that its exact limitation was not always understood (*h*). But since the decision in *Mitchel* v.

(*e*) *Palmer* v. *Bate* (1821), 2 B. & B. 673. (Sale of profits of clerk of the peace.)

(*f*) (1846), 2 Beav. 544.

(*g*) See also *Low* v. *Low* (1735), 3 P. W. 391; *Blackford* v. *Preston* (1799), 8 T. R. 89; *Hanington* v. *Duchastel* (1781), 1 Bro. C. C. 124; 1 Sw. 139 n.; *Flarty* v. *Odlum* (1790), 3 T. R. 681; *Waldo* v. *Martin* (1825), 4 B. & C. 319; *Thomson* v. *Thomson* (1802), 7 Ves. 478; *Card* v. *Hope* (1824), 2 B. & C. 661; 4 D. & R. 164 (a deed of sale of ship in service of East India Company); *Richardson* v. *Mellish* (1824), 2 Bing. 229; *Cooper* v. *Reilly* (1829), 2 Sim. 560 (salary of assistant parliamentary counsel to Treasury not assignable); *R.* v. *Charretie* (1849), 13 Q. B. 447; *Graeme* v. *Wroughton* (1855), 11 Ex. 146; 24 L. J. Ex. 265; *Corporation of Liverpool* v. *Wright* (1859), 28 L. J. Ch. 868. (For other cases under the above Acts, see Chitty's Statutes, Vol. iv., edited by Lely.)

(*h*) As to the difference of opinion, see *Jollyfe* v. *Broad* (1621), Cro. Jac. 596.

Mr. Parsons suggests (Contract 2, 748) that the law as to restraint of trade grew out of the English law of apprenticeship, by which no person could exercise any regular trade or handicraft, except after a long apprenticeship, and generally a formal admission to the proper guild. "If he had a trade, he must continue in that trade, or have none. To relinquish it, therefore, was to throw himself out of employment; to fall as a burthen upon the community; to become a pauper." The principle was not, perhaps, definitely laid down until 1711, when *Mitchel* v. *Reynolds* was decided; but it is stated long before the pass-

Reynolds (*i*), in the King's Bench, in 1711, the following principles have been established:—(1.) That all contracts in general restraint of trade are void; (2.) That particular or limited restraints, if for good consideration, are valid. "*Primâ facie*," to quote the language of the Court in *Hilton* v. *Eckersley* (*k*), "it is the privilege of a trader in a free country, in all matters not contrary to law, to regulate his own mode of carrying it (his trade) on, according to his own discretion and choice. If the law has in any matter regulated or restrained his mode of doing this, the law must be obeyed. But no power short of the general law ought to restrain his free discretion." Hence the Courts have refused to give effect to agreements by which persons professed to surrender this right.

(1.) The first requisite of valid agreements in any way in restraint of trade is that they must be partial as regards space. Even if limited in time, a contract unlimited as regards space will be void. Thus, a bond by which a person bound himself not to follow, or be employed in, the business of a coal merchant for nine months after he should have left his employment, was held bad (*l*). But the Courts will enforce an agreement to take an apprentice, servant, or clerk or traveller, on condition that he shall not solicit custom from the master's customers after or during his engagement, or set up the same trade in opposition to his employer in the immediate neighbourhood.

(2.) The restraint or limitation must be reasonable. This is a question of law for the Court (*m*). The test will be whether the limit imposed is in excess of what is required

ing of the 5th of Elizabeth—the first reported case bearing date 1415 (2 Hen. V., f. 5, pl. 16)—and at Common Law there was no such restriction. In Owen, p. 143, the doctrine is based on the words of Magna Charta. Probably it arose out of the necessity of putting limits to the practice of corporations by bye-laws, and otherwise preventing persons exercising trades, except they were free of the city. See Introduction.

(*i*) 1 P. W. 181; 1 Smith's L. C., 8th Ed. 417. For reasons of the distinction, *Ward* v. *Byrne* (1839), 5 M. & W. 548.

(*k*) (1856), 6 E. & B. 66; 25 L. J. Q. B. 199.

(*l*) *Ward* v. *Byrne*; see note (*i*).

(*m*) Parke, B., in *Mallan* v. *May*

for the protection of the party in favour of whom it is made. "Whatever restraint," it has been said, "is larger than the necessary protection of the party, can be of no benefit to either; it can only be oppressive; and, if oppressive, it is in the eyes of the law unreasonable" (*n*). Agreements not to carry on business of perfumer and hair merchant within London or Westminster, or 600 miles from the same (*o*); not to be employed as coal merchants for nine months (*p*); not to carry on trade as brewer, &c., in Sheffield or elsewhere for ten years (*q*), have been held void. On the other hand, agreements by vendors of a patent process of manufacture, not to carry on in any part of Europe a manufacture with the same object as the patent (*r*); not to carry on business as a surgeon within ten miles of a place for fourteen years (*s*); not to practise as attorney within London or 150 miles of it (*t*); not to carry on business in horsehair within 200 miles of Birmingham (*u*); not to carry on trade as a milkman for twenty-four months within five miles of Northampton Square (*y*), have been held valid. The decision of the Privy Council in *Collins* v. *Locke* (*z*), illustrates the mode of dealing with this question. Certain persons carrying on the business of stevedores in Melbourne, entered into an agreement with a view to prevent competition. One

(1843), 11 M. & W. at p. 668; *Tallis* v. *Tallis* (1853), 1 E. & B. 391; 22 L. J. Q. B. 185.

(*n*) Tindal, C. J., in *Horner* v. *Graves* (1831), 7 Bing. 743; see also Parke, B.'s, judgment in *Mallan* v. *May* (1843), 11 M. & W. 653.

(*o*) *Price* v. *Green* (1839), 16 M. & W. 346.

(*p*) *Ward* v. *Byrne* (1839), 5 M. & W. 548.

(*q*) *Hinde* v. *Gray* (1840), 1 M. & G. 195.

(*r*) *Leather Cloth Co.*, v. *Lorsont* (1869), L. R. 9 Eq. 345; 39 L. J. Ch. 86.

(*s*) *Davis* v. *Moxon* (1793), 5 T. R. 118.

(*t*) *Bunn* v. *Guy* (1803), 4 East, 190

(*u*) *Harms* v. *Parsons* (1862), 32 Beav. 328; 32 L. J. Ch. 247.

(*y*) *Proctor* v. *Sargent* (1840), 2 M. & G. 20. As to what is meant by carrying on business, see *Turner* v. *Evans* (1852), 2 E. & B. 512; *Avery* v. *Langford* (1854), Kay, 663; 23 L. J. Ch. 837. As to mode of measurement of distance, *Atkyns* v. *Kinnier*, (1850), 19 L. J. Ex. 132; *Duignan* v. *Walker* (1859), 28 L. J. Ch. 867; *Mouflet* v. *Cole* (1872), L. R. 8 Ex. 32; 42 L. J. Ex. 8. As to how far such contracts may be partly sustained and partly rejected, *Price* v. *Green* (1847), 16 M. & W. 346; *Mallan* v. *May* (1843), 11 M. & W. 653; *Nicholls* v. *Stretton* (1847), 10 Q. B. 346.

(*z*) (1879) L. R. 4 Ap. 674.

provision was that, if any merchant refused to allow the stevedoring of any ship consigned to them to be done by the party entitled to it under the agreement, but should require any other of the parties to the agreement to do it, the party doing the work should give an equivalent to the persons so losing the stevedoring of an amount to be determined by arbitration. The Judicial Committee thought this not unreasonable. "It provides in a fair and reasonable way for each party obtaining the benefit of the stevedoring of the ships to which by the contract he was to be entitled. Each party might in turn derive benefit from this clause, and one of the four firms would always get the profit of the ship stevedored, though the work might be done by another of them. As regards the merchant, also, he can have his ship stevedored by the party whom he may require to do it, at least there is no prohibition against his having it so done." Another provision in the agreement was, that the parties to it would not "undertake or be in any way concerned in or interfere in the stevedoring, either in whole or in part, of any ship or vessel consigned to any of the said persons or firms otherwise than according to the provision in that behalf hereinbefore contained." "The covenant in such cases," said the Court, "restrains three of the four parties to the agreement from exercising their trade, without giving any profit or benefit to compensate for the restriction to either of the four, whilst the combination they have thus entered into is obviously detrimental to the public, by depriving the merchants of the power of employing any of these parties, who are probably the chief stevedores of the port, to load their ships, unless in each case they employ the one of the four to whom the ship, as between themselves, has been allotted, however great and well founded their objection may be to employ him. Such a restriction cannot be justified upon any of the grounds on which partial restraints of trade have been supported. It is entirely beyond anything the legitimate interests of the parties required, and is utterly unprofitable and unnecessary at least for any purpose that can be avowed."

There must be a consideration for a contract in partial restraint of trade. It was once supposed that the consideration must be "adequate." It has, however, long been settled that the Courts will not inquire into the adequacy or sufficiency of the consideration (*a*). It is enough that it is not merely nominal or colourable.

The restraint may be indefinite in point of time; a man may bind himself not to practise a certain trade in a district for his whole life-time (*b*). Indeed such agreements are very common in the case of the sales of goodwills of businesses. Yet the element of time is not wholly unimportant. When the question is whether a contract is reasonable or not in point of space, it may be material to know how long the restraint is to be in force (*c*).

An agreement to restrain A. from exercising his trade is obviously different in substance from an agreement binding A. not to use a secret process discovered or purchased by B.; and Courts of Equity have always prevented persons making use of trade secrets contrary to an agreement (*d*). Thus A., who sells a patent to B., may be bound by a promise not to divulge the process to any other person.

The question sometimes arises whether a contract of service may be enforced, if the consideration be partly illegal or immoral. Suppose a person is engaged to buy spirits abroad and smuggle them into this country; it would no doubt be held that the two acts were incapable of separation, and that the whole contract was void (*e*). But if it be possible to separate the legal from the illegal part of the consideration —if there be, in substance, separate considerations for separate contracts—a Court will enforce one part of the contract and reject the other.

(*a*) *Gravely* v. *Barnard* (1874), L. R. 18 Eq. 518.

(*b*) *Hitchcock* v. *Coker* (1837), 6 A. & E. 438; *Cattle* v. *Tourle* (1869), L. R. 4 Ch. 654.

(*c*) *Proctor* v. *Sargent* (1840), 2 M. & G. 20.

(*d*) *Leather Cloth Co.* v. *Lorsont*, see note (*r*); *Bryson* v. *Whitehead* (1822), 1 Sim. & St. 74; Best, C. J., in *Homer* v. *Ashford* (1825), 3 Bing. 322, 327.

(*e*) Leake on Contracts, 779; *R.* v. *Northwingfield* (1831), 1 B. & Ad. 912.

APPENDIX A.

Cases of Mutuality.

No Consideration.

Lees v. *Whitcomb* (1828), 5 Bing. 34, 3 C. & P. 289. Defendant signed a written agreement to the following effect: "I agree to remain with Mrs. Lees, of 302, Regent Street, for two years from the date hereof, for the purpose of learning the business of a dress-maker." No binding agreement; there being no obligation to teach, and no consideration being expressed.

Sykes v. *Dixon* (1839), 9 A. & E. 693; 1 P. & D. 463. Memorandum of an agreement in the following terms: "I, William Bradly, of Sheffield, do agree that I will work for you and with John Sykes, of Sheffield, manufacturer of powder-flasks, at such work as he shall order and direct, and no other person whatsoever from this date henceforth during and until the expiration of twelve months, and so on from twelve months' end to twelve months' end, until I shall give the said John Sykes twelve months' notice in writing that I shall quit his service." Agreement was a *nudum pactum*, and could not be enforced.

Williamson v. *Taylor* (1843), 5 Q. B. 175. Defendants, owners of a colliery, hired plaintiff to hew coals at certain rates, according to work done, and plaintiff agreed to continue defendant's servant all the time the pit should be laid off work, and, when required, to do a full day's work on every working day. Defendants not obliged to employ plaintiff for a reasonable number of working days during the term.

Aspdin v. *Austin* (1844), 5 Q. B. 671. The plaintiff agreed to

Consideration.

Pilkington v. *Scott* (1846), 15 M. & W. 657. Plaintiffs agreed with L. that he should serve them for seven years; that he should not during that term work for any other person without the license of the plaintiffs; that it should be lawful for the plaintiffs to deduct from his wages any fines, &c.; and that the plaintiffs should have the option of dismissing him from their service on giving a month's notice or a month's wages. Held that, looking to the provisions of the agreement, there was an undertaking to employ L. for seven years.

Hartley v. *Cummings* (1847), 5 C. B. 247; 17 L. J. C. P. 84. Agreement between plaintiff and A. that A. should serve for seven years at a given rate of wages, and not work or serve any other person without master's consent; in consideration of which plaintiff agreed to pay A. 24*s.* per week for certain work; plaintiff to be at liberty, if A. were sick, or if A. discontinued the trade, to retain any other person in A.'s place, without paying him wages. The agreement not void for want of mutuality, or for being in unreasonable restraint of trade.

R. v. *Welch* (1853), 2 E. & B. 357; 22 L. J. M. C. 145. R. Whittaker, in consideration of £3 lent or advanced to him by certain persons mentioned in the agreement and of wages to be paid by them, agreed to serve them and no one else, without their consent, for twelve months and during and until the expiration of three months from notice of his desire to termi-

No Consideration.

manufacture for the defendant cement, and the defendant, on condition of his faithfully performing the aforesaid contract, covenanted to pay the plaintiff the weekly sum of £4 during the two years following the date of the agreement, and the weekly sum of £5 during the next year following, and to receive him into partnership, &c., at the expiration of three years. Plaintiff also agreed to instruct defendant in the art of manufacturing cement on condition that defendant should not engage in the manufacture otherwise than under plaintiff's management, or with his consent. By a deed subsequently executed, defendant covenanted with plaintiff to perform the several stipulations and agreements in the first agreement. Breach alleged that defendant wrongfully discharged plaintiff from the service of defendant, and prevented him from manufacturing cement, &c. No implied covenant to retain the plaintiff two or three years in the defendant's service, though the defendant was bound by the express words to pay the plaintiff the stipulated wages during those periods, if he performed, or was ready and willing to perform, the condition precedent on his part. The principle affirmed in the case is highly doubtful. The Courts to-day would no doubt imply a covenant to retain.

Dunn v. *Sayles* (1844), 5 Q. B. 685. Deed by which plaintiff covenanted that his son should serve the defendant for five years from the date of the agreement in the art of a dentist-surgeon, and attend for nine hours a day, and the defendant, in consideration of the services to be performed by the plaintiff's son, covenanted to pay certain wages. Breach that the defendant refused to permit the son to remain in his service.

Consideration.

nate the service. The employers agreed to pay on Saturday night in every week during the term all such wages as the articles made by Whittaker amounted to. There was a proviso that either party to the agreement might, after twelve months, give three months' notice. Held that the agreement might be enforced by magistrates under the 4 Geo. IV., c. 34, and was not void for want of mutuality (*Elderton* v. *Emmens* (1847), 4 C. B. 479; (1848), 6 C. B. 160; (1853), 4 H. of L. 624. Count in a declaration on assumpsit on an agreement that in consideration that the plaintiff had agreed to become the permanent solicitor of the defendant's company for reward, &c., the company promised to retain and employ the plaintiff as such permanent solicitor, &c.; breach, that the company wrongfully refused to continue him in his employment as the solicitor of such company. This count not supported by proof of a resolution that plaintiff "be appointed permanent solicitor to the company;" "permanent" meaning "no other than a general employment, as distinguished from an occasional employment in particular matters:" Wilde, C. J. Second count on an agreement that, "from January then next the plaintiff, as the attorney and solicitor of the company, should receive a salary of £100 per annum in lieu of rendering an annual bill of costs for general business transacted by him for the company as such attorney and solicitor, and should for such salary advise and act for the company on all occasions in all matters connected with the company, and he should attend the secretary and the board of directors when required." The Court of Common Pleas arrested judgment on a count for wrongful dismissal setting forth this agreement. The

No Consideration.

Held, on motion in arrest of judgment, that there was no covenant corresponding to the breach. See, however, *McIntyre* v. *Belcher*, 32 L. J. C. P. 254; *Worthington* v. *Sudlow*, 31 L. J. Q. B. 134; and Crompton, J., in *Emmens* v. *Elderton*, 4 H. of L., p. 624.

Payne v. *New South Wales Coal, &c., Co.* (1854), 10 Ex. 283. Defendants agreed with plaintiffs that plaintiffs should have defendants' ship-brokering business at Sydney upon certain terms, and that defendants would provide plaintiffs with free passage to that port; void, plaintiffs not being bound to serve defendants.

Consideration.

Exchequer Chamber reversed the judgment of the Common Pleas; the House of Lords affirmed the judgment of the former. The company was bound to continue the relation for a year, but not bound to supply plaintiff with business as solicitor, or employ him when it had occasion to employ solicitor.

Whittle v. *Frankland* (1862), 31 L. J. M. C. 81; 2 B. & S. 49; 5 L. T. N. S. 639. Agreement by appellant to serve the respondent exclusively until the expiration of twenty-eight days' notice, and, on the part of the respondents, to pay wages fortnightly, and not to discharge without twenty-eight days' notice; implied promise to find appellant work.

Thomas v. *Vivian* (1873), 37 J. P. 228. T. agreed to serve V. for a year; but if V. ceased to carry on works from being unable to find ore, or from any other cause, V. to be at liberty to terminate the contract. See also *Ex parte Bailey* (1854), 3 E. & B. 607.

CHAPTER XIII.

DUTIES OF MASTERS.

It is impossible to state all the duties of masters and servants. They vary with the nature of the employment; they are regulated partly by usage; they are also laid down in a multitude of Acts of Parliament. A few of the principal duties of masters at Common Law may be here stated. They correspond to rights belonging to their servants. They are implied conditions in all contracts of hiring and service, and unless the contrary be stipulated, they are part alike of written and verbal contracts.

It is the duty of a master to pay to his servant the wages or salary agreed upon. No presumption that wages or salary is payable arises from the mere fact that services are performed or work is done for another.

It is not certain that the second of these propositions expresses correctly the purport of the authorities. They are not quite consistent. Thus, in Viner's Abridgement (*a*), it is said that "every such retainer (as a servant) will be presumed to be in consideration of wages unless the contrary appears." It has been said, too, that when a man bestows his labour for another, he has a right to recover compensation for that labour (*b*). On the other hand, there are autho-

(*a*) Vol. v. p. 362, citing *Pinchon's Case*, 9 Reports, 86b (which seems scarcely in point). See Le Blanc J., in *R.* v. *Shinfield* (1811), 14 East, 547.

(*b*) *Poucher* v. *Norman* (1825), 3 B. & C. 744 (action by certificated conveyancer for work done): "The general rule," said the Court, "is, that any man who bestows his labour

rities which go to show—and this seems the true view—that service, however long continued, creates no claim for remuneration without a bargain for it, either expressed, or implied from circumstances showing an understanding on both sides that there should be payment (*c*). It is highly doubtful whether there exists any presumption on the subject; if it exist, it is not irrebuttable, and it appears to be only the conclusion to which general usage and knowledge of the world warrant juries in arriving.

Service is usually performed in the expectation of receiving wages, and in most cases it would be correct, looking to usage, to say that there was an implied promise to pay them. But one may serve another out of gratitude or affection; one may intrude one's services upon another, or render them without his privity or assent. It is not uncommon for persons to work for years in the mere hope that they will be remembered by a testator in his will. A person, too, may serve for a time on the understanding that he is on probation, and that nothing is to be paid to him in the meantime. In every contract of hiring and service are presumed a request and promise to pay; but in a multitude of cases there is, in fact,

for another has a right of action to recover compensation for the labour. There are two exceptions to that rule, viz., physicians and barristers."

(*c*) Martin, B., in *Reeve* v. *Reeve* (1858), 1 F. & F. 280, and *Foord* v. *Morley* (1859), 1 F. & F. 496; see also *Higgins* v. *Hopkins*, note (*d*). Slaves who came to this country, and who brought actions in the time of Lord Mansfield and Lord Kenyon against their masters for remuneration, were always nonsuited in the absence of proof of a special agreement to pay. *Rex* v. *Thames Ditton* (1785), 4 Doug. 300: *Alfred* v. *St. James* (1799), 3 Esp. 3. In the latter case a promise to pay wages was proved, and it might be inferred that, previous to the promise, no remuneration was intended. See as to the contrary doctrine in the American Courts, Wood. 107. The bias of our Courts against inferring a promise to pay from the mere fact that services are rendered, is shown by *Lamburn* v. *Cruden* (1841), 2 M. & G. 253; 2 Scott, N. R. 533. (Servant engaged at a yearly salary payable quarterly: about a month after the termination of one of the years of his service, he tendered his resignation; after another month the resignation was accepted; nothing was said as to the remuneration for the time which had elapsed since the termination of the last year's service. Held that "no new contract arises by implication of law upon a simple dissolution of a special contract of hiring and service, in respect of services performed under such special contract previously to its being dissolved.") See, on the other hand, *Bayley* v. *Rimmell* (1836), 1 M. & W. 506.

neither request nor promise. Often the parties never give a thought to their legal position until their relation is ended by a quarrel or death. The question is one of fact: was there an agreement or distinct understanding that the person who does the work should be remunerated? Obviously this can be determined only by considering the whole circumstances, the situation and relationship and condition of the parties; and the character and value of the services performed. When people do work for another with his knowledge—say, labour in his fields, or paint his house—they, as a rule, expect to be paid for it; the law will infer a promise to pay for such work (*d*). But this is not inevitable; and the true view seems to be, that if a person "does work on the order of another, under such circumstances, that it must be presumed that he looks to be paid *as a matter of right* by him, then a contract would be implied with that person" (*e*). This rule may not be of much assistance in determining cases as they arise; it is difficult to state any clearer rule as to the circumstances in which the law will raise an implied promise to pay.

Work done for Relatives and Friends.

Frequently, when work is done for relatives or friends, it is hard to say whether wages or remuneration is due. The difficulty is one not of law, but of fact, which it is for a jury, on a review of the whole circumstances, to settle. In several American cases, attempts are made to lay down rules of law as to the circumstances in which it is proper, and as to the relatives for whom it is right to presume that services are or are not rendered for hire. "In all cases," says Mr. Wood, in his "Law of Master and Servant," summarising several decisions

(*d*) *Higgins* v. *Hopkins* (1848), 3 Ex. 166.

(*e*) The words of Pollock, C. B., in *Taylor* v. *Laird* (1856), 25 L. J. Ex. 329, may be quoted: "One cleans another's shoes; what can the other do but put them on? Is that evidence of a contract to pay for cleaning?" See *Bradshaw* v. *Hayward* (1842), Car. & M. 591; *Stoke* v. *Pitminster* (1726), 2 Bott. 183; *R.* v. *Weyhill* (1759), 2 Bott. 185.

"where compensation is claimed for services rendered for near relatives, as a father, brother, grandfather, &c., the law will not imply a promise, and no recovery can be had unless an express contract, or circumstances equivalent thereto, is shown" (*f*). "Where the parties stand to each other in the relation of members of the same family, as brothers, father and son, or father and daughter; or, if inmates of the same family, though only remotely related, there is *primâ facie* no implied promise to pay for labour done" (*g*). All attempts to lay down any rule based upon relationship are, it is submitted, futile. A son renders services to his father; a sister acts as housekeeper to a bachelor brother; a daughter remains in her father's house after coming of age, and does household work; a granddaughter goes to reside with her grandfather (*h*); it is impossible in such cases to determine solely from the relationship of the parties whether there is a right to payment. An endless variety of circumstances may affect the answer to the question whether there is a contract. Probably no clearer principle can be stated than that which is laid down in *Davies* v. *Davies* (*i*). The plaintiff and his

(*f*) P. 115.

(*g*) Ditto, p. 121. At what degree of relationship does the presumption begin or end? Does it extend to work done by a niece for an aunt or uncle? After much vacillation on the subject, the Scotch Courts have, according to Lord Fraser (Treatise of Master and Servant, 2nd ed., p. 21), finally adopted the view that, "when there is a clear proof of service rendered, and no wages paid, wages are due, unless it be made out that there was an agreement that the services should be gratuitous."

(*h*) *Ridgway* v. *English*, 22 N. J. 409; *Davis* v. *Goodenow*, 27 Vt. 715; *Robinson* v. *Cushman*, 2 Denio, 149.

(*i*) (1839) 9 C. & P. 87. The following are some decisions to the same effect: *Jewry* v. *Busk* (1814), 5 Taunt. 302. (Defendant promised to make to the plaintiff, a glazier, if he would take care of plaintiff's house, open the windows, air it, and show it to persons who applied to see it, a handsome present, and subsequently gave him £2. Mansfield, C. J., thought there was no evidence of a contract, and that the plaintiff trusted to defendant's generosity. The jury, however, gave a verdict for the plaintiff; and the Court thought that there was evidence of a contract to do the work for a reasonable recompense). *R.* v. *Sow* (1817), 1 B. & Ald. 178. (An illegitimate child, hired for a year by the wife of the reputed father at 50*s.* wages, continued for three years to do work, but, after the first year, not paid wages; held that the sessions were warranted in finding that, after the first year, she was living as a child with her father, and not as a servant with her master. See remarks of Bayley, J.) *Bradshaw* v. *Hayward* (1842), Car. & M. 594.

wife, who boarded and lodged in the house of the defendant the brother of the plaintiff, and assisted him in his business sued for reward for their services. The defendant pleaded a set off for board and lodging. In leaving the question to the jury, Mr. Justice Williams said, "Neither the services on the one hand, nor the board and lodging on the other, can be charged for, unless the jury are satisfied that there was a contract." Such a contract must, it is submitted, be proved, in the ordinary way.

Work done by Persons of Skill in the Exercise of their Profession.

English law knows almost nothing of the difference between liberal and illiberal professions, which plays so important a part in Roman law. In the latter the *liberalia studia* included the professions of rhetoricians, grammarians, geometers, secretaries, librarians, schoolmasters (*k*); for their services no remuneration was presumed. With the exception of the service of barristers, already referred to, no such distinction exists in English law. Perhaps, indeed, a difference of fact may exist between certain kinds of skilled and unskilled labour. The latter may more often be given gratuitously. In the great majority of instances, a person who does work and employs professional skill for the benefit of another, will be entitled to reasonable remuneration, even if there

(Action for wages by female servant against defendant, an innkeeper; Cresswell, J., told the jury that the question was whether there was a contract of hiring or not, and allowed the defendant's counsel to cross-examine as to whether plaintiff was not defendant's mistress, with a view to show that there was no contract of service.) *Foord* v. *Morley* (1859), 1 F. & F. 496. (Plaintiff lived with defendant as a housekeeper; nothing said as to wages; but plaintiff received board and lodging, and was at liberty to keep fowls, &c. Plaintiff left defendant, but returned, and nothing was said as to wages; ruled by Martin, B., that it was for the plaintiff to establish that there was an understanding or contract as to whether she should be paid wages. See also *R.* v. *St. Mary*, 2 Boll. 275; *R.* v. *Stokesley* (1796), 6 T. R. 757; *R.* v. *Longwhatton* (1793), 5 T. R. 447. As to board, *Nichols* v. *Coolahan*, 10 Met. Mass. 449.

(*k*) Dig. 50, 13, 1.

be no express agreement; the inference being generally irresistible in regard to skilled work, that it was understood such services were to be paid for (*l*). Here, too, however, there is no absolute presumption in law.

Remuneration left to Employer's Discretion.

A servant may leave it to the discretion of his employer to say whether he is to be paid. If it be clear from the terms of the agreement or the whole circumstances that the employer is the sole judge whether any and, if so, what remuneration is to be paid, no action will lie: the servant cannot even claim to recover reasonable remuneration for what he has done. *Nulla promissio potest consistere, quæ ex voluntate promittentis statum capit.* Thus, a person who had rendered services to a committee under a resolution that "any service to be rendered by him should be taken into consideration, and such remuneration be made as should be deemed right," was incapable of recovering for his services (*m*).

(*l*) *Brown* v. *Nairne* (1839), 9 C. & P. 264. (Action by broker for procuring charter; no special agreement as to remuneration; left to the jury to say what was the customary remuneration, or, if no custom, what was reasonable remuneration.) *Hingeston* v. *Kelly* (1849), 18 L. J. Ex. 360. (Action for work and labour by an attorney who had rendered professional services to plaintiff at a contested election; evidence by defendant that the services were rendered gratuitously; direction by the Judge that the plaintiff was entitled to a verdict unless the defendant made out that the services were to be given gratuitously; held a misdirection, and the true question for the jury was, whether, taking all the evidence together, the plaintiff was to be paid for his services. Baron Parke's dictum, "If the defendant makes it doubtful only whether the services were to be gratuitous, it is enough," seems open to question. The rule seems to be that the burthen of proof is always on the plaintiff.

(*m*) *Taylor* v. *Brewer* (1813), 1 M. & S. 290; see also *Peacock* v. *Peacock* (1809), 2 Camp. 65. (A lawstationer said to his son, on his coming of age: "You shall have fifteen shillings a week until October; the books must then be made up, and you shall have a share; we need not talk of the share until October comes; we shall settle it then;" held by Lord Ellenborough that the son was entitled to some share, and that it was for the jury to say what was a just and reasonable proportion.) *Bryant* v. *Flight* (1839), 5 M. & W. 114. (Plaintiff wrote to defendant as follows: "I hereby agree to enter your service as a weekly manager, commencing next Monday, and the amount of payment I am to receive I leave entirely to

It is a question for the Judge, if the contract be in writing, and for the jury, if otherwise, to say what was the intention of the parties, and whether it was intended that remuneration should be claimed as a right. If wages or remuneration are made dependent on the certificate of a third person, it must be procured before an action can be brought. In other words, the obtaining of the certificate is a condition precedent. Thus, in *Owen* v. *Bowen* (*n*), where the agreement was that the amount of remuneration should be left to a third person, an action for the recovery of wages failed because it did not appear that he had been requested to fix the wages. So, in *Morgan* v. *Birnie* (*o*), an action having been brought against the defendant, who had agreed to pay for buildings erected by the plaintiff, on production of the architect's certificate that the work was done to his satisfaction, it was not sufficient that the architect had checked the plaintiff's charges

you ;" held (Parke, B., dissenting), that the defendant was bound to pay the plaintiff something for his trouble, and that the jury, in an action on a *quantum meruit*, might decide what the defendant, acting *bonâ fide*, would or ought to have awarded.) *Roberts* v. *Smith* (1859), 28 L. J. Ex. 164. (Plaintiff agreed to accept post of secretary to a company at a salary of two hundred pounds, "commencing at the present date, if the company be completely registered, and put into operation ; if not, I shall be satisfied with any remuneration for my time and trouble you may think me deserving of and your means can afford." Defendant replied : "It is distinctly agreed and understood that if the company is not formed and carried out, that part of your letter which alludes to your salary be null and void, and that at the expiration of three months it is entirely left to me to give unto you such sum of money as I may deem right as compensation for labour done, in the event of the company not being carried out, or of making any further advance for the continuing of the same." The company was not registered or "carried out." No action lay for salary or compensation.) *Ex parte Metcalfe* (1856), 6 E. & B. 287. (Refusal to grant mandamus to Local Board of Health to pay reasonable remuneration to a person who presided at the first election of the board : the board having, under the 11 & 12 Vict. c. 63, s. 30, discretion as to what they thought reasonable.) *Bird* v. *McGahey* (1849), 2 C. & K. 707 ; *Rawlings* v. *Chandler* (1854), 9 Ex. 687.

(*n*) (1829), 4 C. & P. 93 ; see also *London Tramway Co.* v. *Bailey* (1877), L. R. 3 Q. B. D. 217 ; 47 L. J. M. C. 3 ; 37 L. T. 499 ; 26 W. R. 494 ; and as to the power to rescind under the Master and Servant Act of 1867, and Employers and Workmen Act of 1875, arbitration clauses ; *Wilson* v. *Glasgow Tramway Co.* (1878), 5 R. 981.

(*o*) (1833), 9 Bing. 672 ; *Moffatt* v. *Dickson* (1853), 13 C. B. 375 ; *Forbes* v. *Milne* (1827), 6 S. 75 : (lady engaged a servant on condition that he obtained a certificate of character from his last employer ; no cause of action unless such certificate obtained).

and had sent them to the defendant; there was no certificate, and the action therefore could not lie.

Gratuities, and Work done in Expectation of Legacies.

No action will lie to recover gifts or gratuities. It is not always easy, however, to ascertain what are gifts or gratuities; that a particular sum is spoken of as a gratuity does not necessarily decide that it is not of the nature of wages (*p*). Presents or gratuities to a servant under age cannot be deducted by a master from wages. Thus, in one case in which a master gave to a maid of all work a silk dress, and paid for coach fares to her mother's house, it was held that he could not deduct these sums from her wages (*q*).

We need not examine here all the decisions as to services rendered in expectation of a legacy. Few general principles can be extracted from the authorities. The question in every case appears to be whether the person who rendered the services trusted to the generosity of him for whom he worked, or whether there was an implied understanding (or, to be more accurate, a contract), that remuneration was to be given him (*r*). If the work were done on the strength

(*p*) (1862), *Lake* v. *Campbell*, 5 L. T. N. S. 583; *Parker* v. *Ibbetson* (1858), 27 L. J. C. P. 236; 4 Jur. N. S. 536.

(*q*) *Hedgley* v. *Holt* (1829), 4 C. & P. 104.

(*r*) *LeSage* v. *Coussmaker* (1794), 1 Esp. 187. (Assumpsit for work and labour by a stockbroker; defence that the services were gratuitous, and done solely with a view to a legacy: held by Lord Kenyon, that it was a question for the jury.) *Osborn* v. *Governors of Guy's Hospital* (1726), 2 Stra. 728. (Action for work and labour in transacting Mr. Guy's stock affairs. Raymond, C. J., directed the jury to decide what was the understanding between the parties; "a man who expects to be made amends by a legacy, cannot afterwards resort to his action.") *Baxter* v. *Gray* (1842), 4 Scott, N. R. 374; 3 M. & G. 771. (Action for work and labour by a surgeon against executors of a lady whom he had attended; no bill was sent in during the lady's lifetime, plaintiff being in hopes that she would leave him a legacy; jury gave plaintiff £250 damages. Court refused to disturb the verdict. Tindal, C.J., observed: "The plaintiff probably hoped and expected to receive a legacy; but, this hope failing, I see no reason why he should not be held to be remitted to his legal right." "The ordinary presumption is that services are rendered in expectation of a remuneration, unless the contrary is proved:"

of the expectation of a legacy, and executors were to pay such claims, they might be disallowed in their accounts (*s*).

Remuneration for Work done under a Contract Terminated by Mutual Consent, &c.

If a contract of hiring and service be dissolved by mutual consent, a servant may recover wages *pro ratâ*. Such also is the case when he is dismissed without proper cause before the end of the term (though he may also recover damages calculated with reference to the loss he has sustained); or, when a servant, without having actually done all which he agreed to do, has performed services which are of value, and by which his master has benefited (*t*).

Remuneration for Extra Work.

What is a fair day's work is to be ascertained by reference to the agreement, or to custom. Failing that, it is a question of what is reasonable in the circumstances. Of course, a servant must be allowed a reasonable time to eat and sleep (*x*).

Whether he must work on Sunday depends also on the nature of his employment and usage. A servant may recover remuneration for work done out of hours, or outside the scope of his regular employment (*y*). But in order to entitle him to

Coltman, J.). *Shallcross* v. *Wright* (1850), 12 Beav. 558; and *Dallinger* v. *St. Albyn* (1879), 41 L. T. N. S. 406.

(*s*) As to bequests in satisfaction of wages, see Roper on Legacies, 4th Ed. 1026 and 1053: also *Chancy's Case* (1717), 1 P. W. 408. (A master being indebted to his man-servant for wages, £100, gave him a bond for the £100, as due for wages, and afterwards, by will, gave £500 for long and faithful services. Lord Chancellor King held that this was not in satisfaction of the bond. The testator had by his will directed that all debts and legacies should be paid.

(*t*) See as to this, *Farnsworth* v. *Garrard* (1807), 1 Camp. 38; *Munro* v. *Butt* (1858), 8 E. & B. 738; and the notes in Smith's L. C. to *Cutter* v. *Powell*.

(*x*) *Wilson* v. *Simson* (1844), 6 D. 1256; Parsons, 2, 41; and see as to this, 5 Eliz. c. 4, ss. 12 & 13. Fraser's Master and Servant, p. 408.

(*y*) Wood, 172.

recover, the services must clearly not be such as he is bound to perform under his contract of hiring and service; the services must be wholly different from these either in kind or amount. Otherwise an agreement for extra remuneration will be *nudum pactum;* there will be no consideration for it, (a promise to do what one is bound to do forming no consideration), and it will not be enforced (*z*). *Harris* v. *Carter* (*a*) illustrates this principle. The plaintiff, a sailor had signed articles for a voyage out and home at £3 a month. Several of the crew deserted at the outward port, and the captain, to induce the plaintiff and others to stay, agreed to articles for the homeward voyage at £6 a month. It was held by the Queen's Bench, that it was the duty of the plaintiff to perform the contract into which he had originally entered for the outward and homeward voyages, and that the subsequent promise was void for want of consideration. "Had the plaintiff," said Lord Campbell, "been relieved from the obligation which he had contracted towards the shipowners,

(*z*) Chap. x.

(*a*) (1854), 3 E. & B. 559; 23 L. J. Q. B. 295; *Bell* v. *Drummond* (1791), 1 Peake, 63. (Plaintiff acted as deputy to clerk of commissioners of land tax, at salary of £100. New duties afterwards imposed upon the plaintiff: held that this raised no implication that servant was entitled to additional salary.) *Harris* v. *Watson* (1791), 1 Peake, 102. (No action will lie on a promise by a captain to a sailor of extra wages if he would perform extra work). *Elsworth* v. *Woolmore* (1803), 5 Esp. 84. (Seamen cannot recover extra wages in virtue of any usage or custom.) *Stilk* v. *Meyrick* (1809), 6 Esp. 129 and 2 Camp. 317. (Promise by defendant, a captain, to divide among crew the wages of two men who had deserted; no action lay. "They had undertaken to do all they could under all the emergencies of the voyage." Ellenborough, C. J.) *Frazer* v. *Hatton* (1857), 2 C. B. N. S. 512; 26 L. J. C. P. 226. Agreement by plaintiff to serve as steward for three years on board defendant's ship Custos at £3 a month; stipulation that he should, if required, be transferred to any other ship in the same employment; during the three years, plaintiff was transferred to the ship Dauntless; by a second agreement the captain promised to pay plaintiff £4 a month: held that there was no consideration for the second agreement.) *Carter* v. *Hall* (1818), 2 Sta. 361. (Plaintiff, purser's steward on board one of the king's ships, in receipt of a salary from the Crown: held that he could not recover extra remuneration from the defendant, the purser, though there was evidence that it was usual for the purser to pay one pound for every gun by way of annual salary). The *Araminta* (1854), 18 Jur. 793. (Master of a ship distributed the amount of wages forfeited by deserters among those sailors who would manage the ship home: held that the owners were entitled to deduct the amount from the wages due.) *Money* v. *Hannan* (1867), 5 S. L. R. 32.

he might have entered into a fresh contract, and, under some circumstances, the captain might have had authority to bind the owners by entering into a fresh agreement on their behalf with him. Had there, for instance, been an entire change of the voyage, it might have been so. But here there were no circumstances of that kind. The voyage remained the same voyage for which the men had shipped; there was no consideration for a promise to the plaintiff; and the captain had no authority to bind the owners." So, too, a promise to pay a pilot unusual remuneration for services which he was bound by statute to render to a ship would be held void (*b*). The question has generally arisen between owners of ships and seamen, when the latter, owing to desertion or other causes, have refused to proceed on a voyage unless they were paid extra remuneration. The Courts have always held that promises made in such circumstances are invalid. There is authority for saying that if payments are made by a captain under such a contract, they may be recovered by the owner (*c*). If, however, extraordinary services be required and rendered, if risk far in excess of what was contemplated have to be encountered, if the work to be performed be clearly additional to the servant's duties, a promise to pay extra wages will be enforced. The limitations of the principle stated in *Harris* v. *Carter*, will be understood by comparing it with *Hartley* v. *Ponsonby* (*d*). The crew of a ship was reduced from thirty-six (the number on board when she sailed from Liverpool) to nineteen, only four or five of whom were able seamen. The captain entered into an agreement with certain of the seamen to pay them increased wages if they would continue to navigate the ship. The agreement was held binding. "If there had been merely additional labour, and the voyage dangerous to life from this excess only," said Lord Campbell, "I should have thought that the new contract was not binding on the master any more than on

(*b*) Maude & Pollock, 4th ed., p. 646; but see the *Jonge Andries* (1857), Swa. 226.

(*c*) The *Araminta*, see note (*a*).

(*d*) (1857), 7 E. & B. 872; 26 L. J. Q. B. 322.

the owners. But I think that we must take it, from the finding (that it was unreasonable for a ship of 1,045 tons to go to sea with only nineteen men), that the plaintiff and the remaining crew were not bound under these articles to proceed on the voyage, and so were free men and at liberty to make a fresh bargain" (*e*). There is nothing to hinder a seaman recovering for salvage services, and any stipulation in an agreement by which he consents to abandon his right, will be wholly inoperative (*f*).

Entire and Divisible Contracts of Service.

A contract of service may be entire and indivisible, that is, the consideration may be dependent on the entire fulfilment of the contract—the entire fulfilment of the promise given by one party being a condition precedent to the fulfilment of any part by the other (*g*). It may be severable or divisible, that is, the consideration may be susceptible of apportionment according as the contract is more or less carried out.

The terms of the contract may make it perfectly clear whether it is divisible or not. For example, a man may engage to do work at so much an hour or a day, or so much a foot, in which case he is free to leave off at any time and claim the

(*e*) See also *The Providence* (1825), 1 Hag. Ad. 391. (Second mate succeeded to the office of chief mate during the voyage; no alteration in contract with reference to change of office; held entitled to rate of wages given to chief officers in similar voyages.) *Clutterbuck* v. *Coffin* (1842), 3 M. & G. 842. (Plaintiff engaged by commander of a brig of war to serve as cook, at the rate of £12 a year beyond the rating of a seaman: action for wages; defence that there was no consideration; but held that the plaintiff could recover, this not being a case in which the plaintiff contracted to do work which he was already bound to perform, but the case of a person perfectly free when he entered into the agreement.)

(*f*) 17 & 18 Vict., c. 104, s. 182, and sec. 2. *The Florence* (1852), 16 Jur. 572. (Ship abandoned at sea: subsequently recovered by her crew: held that crew were entitled to be rewarded as salvors.) See also the same view taken in *The Vrede* (1861), 30 L. J. P. 209, and *Hanson* v. *Royden* (1867), L. R. 3 C. P. 47; 37 L. J. C. P. 66. (Captain died during voyage; first mate took his place and appointed A., an able seaman, second mate; held that A. could recover second mate's wages.)

(*g*) See Smith's L. C. vol. ii. p. 1.

value of the work which he has done. If the contract, on the other hand, be that the one party shall do the whole of a certain amount of work, and that the other shall pay for the whole—if one promise a lump sum for a definite and complete thing—it is different. No one would say that a portrait-painter could sue for his labour upon an unfinished picture, or that a watch-maker employed to repair a watch could be entitled to recover before he had completed his work. He cannot sue for the whole remuneration, because he has not performed the whole work; he cannot recover on a *quantum meruit*, because the contract is entire. Thus, a workman who had agreed to repair and make perfect chandeliers for £10, was held not entitled to recover anything, though the jury found that he had done work to the value of £5 (*h*). The rule appears to be, that if a contract be for a certain defined time, even if the rate of compensation be at so much a day or week, it is indivisible, and full performance is a condition precedent to recovery, in the absence of some custom to the contrary. Thus, to refer to the leading case of *Cutter* v. *Powell* (*i*), the executrix of a sailor, who was hired as second mate for a voyage from Jamaica to Liverpool for thirty guineas, failed to recover a proportionate part of his wages in these circumstances: The sailor had died before the whole voyage was completed; the contract was held to be entire; the performance of the whole service was a condition precedent, and in the absence of proof of any usage to pay proportionate sums, his executrix could recover no part of the thirty guineas. So, too, sailors, who had agreed not to demand their wages or any part thereof, until they arrived at the port of discharge, were held to be incapable of recovering wages *pro ratâ* if their ship were lost, or the voyage from any cause were not brought to completion (*k*). An early

(*h*) *Sinclair* v. *Bowles* (1829), 9 B. & C. 92; 4 M. & R. 1. This case, however, partly turned on the form of the action.

(*i*) (1795), 6 T. R. 320; Smith's L. C. vol. ii. p. 1.

(*k*) Abbott on Shipping (Prentice's ed.), 464; see, however, *Chandler* v. *Greaves* (1792), 2 H. Bl. 606, n.

case, which strikingly illustrates this doctrine, is *Throgmorton* v. *Countess of Plymouth* (*l*). The Earl of Plymouth had appointed a person, of whom the plaintiff was administrator, to collect rents at a salary of £100 a year. He died after serving three quarters of a year. The administrator sued the Earl's administratrix for remuneration *pro ratâ*. The Court held that nothing was due. The most frequent illustration of the doctrine occurs in the case of domestic servants hired for a definite time. If dismissed for misconduct, they forfeit all right to any wages which have not accrued due, even for the time which they have served (*m*). On the other hand, if a contract be not to do a specific work for a specific sum, or work for a definite term; if the work be in its nature apportionable, and no remuneration be fixed upon; if the parties obviously intended payment to keep pace with accrual of benefit; if there be no express contract or custom to complete work before any remuneration is paid; if something be done under a special contract which is not in strict accordance with it, but from which benefit has been derived; the performance of a part will entitle a workman to partial payment. A shipwright was employed to repair a ship; no sum for the total repairs was fixed; after having completed a portion of the work, he refused to go on till he was paid for what he had already done; it was held that he could recover on a *quantum meruit* (*n*).

According to the maritime law, freight was the mother of wages, and if the former were not earned, neither were the latter (*o*). The Court of Admiralty, especially in Lord Stowell's time, sought to prevent the harsh consequences of this principle (*p*). In the exercise of an equitable jurisdic-

(*l*) (1686) 3 Mod. 153; 1 Salk. 65.

(*m*) Chap. XXIII. *Crocker* v. *Molyneux* (1828), 3 C. & P. 470. (Plaintiff hired for a year and provided with a livery suit; wrongfully dismissed within the year; could not maintain trover for suit. Of course, he might have brought an action for being prevented from becoming entitled to the suit.)

(*n*) *Roberts* v. *Havelock* (1832), 3 B. & Ad. 404.

(*o*) See *The Juliana* (1822), 2 Dod. 504; Maclachlan, 215.

(*p*) *The Neptune* (1824), 1 Hag. 227; and see cases cited in Lord Stowell's judgment in *The Juliana*, note (*o*).

tion, the Admiralty Court decided that when a voyage was described in the articles of agreement by reference to various ports of delivery, a proportionate claim for the payment of wages attached at each of them, and that all attempts to prevent this by special contracts were ineffectual and void (*q*). The Legislature has abolished the rule that wages are dependent on the earning of freight. The Merchant Shipping Act of 1854, 17 & 18 Vict., 104, sec. 183, says: "No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim." Section 184 of the same Act says: "If any seaman or apprentice to whom wages are due under the last preceding enactment, dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage."

By the maritime law, a sailor's wages could not be withheld or reduced because he was sick or had been disabled by an accident in the course of his duties (*r*). This is still so if a seaman remain on board, unless the sickness or accident be the result of his own default. If any temporary detention of a vessel by force—for example, by an embargo or capture followed by recapture—occurs, the seamen will be entitled,

(*q*) *The Juliana;* Abbott on Shipping, Prentice's ed., p. 465.

(*r*) *Paul* v. *Eden*, Abbott on Shipping, 467, Prentice's ed.; *Chandler* v. *Grieves*, see note (*k*), *supra*. The following are the chief cases on this subject:—*Hulle* v. *Heightman* (1802), 2 East, 145; *Appleby* v. *Dodds* (1807), 8 East, 300; *Countess of Harcourt* (1824), 1 Hag. 248; *The Minerva* (1825), 1 Hag. 347; *George Home* (1825), 1 Hag. 370; *Hillyard* v. *Mount* (1828), 3 C. & P. 93; *Sinclair* v. *Bowles* (1829), 9 B. & C. 92; *Prince Frederick* (1832), 2 Hag. 394; *Jesse* v. *Roy* (1834), 1 Cr. M. & R. 316; *Button* v. *Thompson* (1869), L. R. 2 C. P. 330.

not only to their own full wages, but also to wages for the period of detention (*s*).

Remuneration for work Unskilfully Done.

For work which is executed unskilfully or improperly, or not in such a manner as was bargained for, a workman will be entitled to recover only the reasonable value of his services. The rule, as laid down in some early cases, was different. If the work were executed under a special contract, the employer, it was said, must pay the stipulated price and obtain compensation by resorting to a cross action. But since the decision of the King's Bench in *Basten* v. *Butter* (*t*), a more reasonable rule has been recognised. That was an action by a carpenter against a farmer who had employed him to roof a barn. Evidence was offered at *nisi prius*, with a view to show that the work was improperly done. The evidence was rejected. The Court of King's Bench set the verdict for the plaintiff aside on the ground that the evidence should have been admitted; and in the subsequent case of *Farnsworth* v. *Garrard* (*u*), Lord Ellenborough stated thus the correct rule: "If there has been no beneficial service, there shall be no pay; but if some benefit has been derived, though not to the extent expected, this shall go to the amount of the plaintiff's demand, leaving the defendant to his action for negligence. The claim shall be co-extensive with the demand." In illustration of this, *Monneypenny* v. *Hartland* (*x*) may be mentioned. There it was held by Abbott, C.J., that a surveyor whose estimate of the cost of a bridge turned out to be incorrect to a considerable amount, owing to his not having examined the nature of the soil, could recover nothing. So in *Bracey* v. *Carter* (*y*), it was

(*s*) *Beale* v. *Thompson* (1804), 4 East, 546; Maclachlan, 231; Maude & Pollock, 4th ed. I. 223.

(*t*) (1806) 7 East, 479.

(*u*) (1807) 1 Camp. 38. (Action for work and labour done, and materials employed, in rebuilding the front of a house, which, when finished, was in great danger of falling.)

(*x*) (1824) 1 C. & P. 352.

(*y*) (1840) 12 A. & E. 373; see also *Le Loir* v. *Bristow* (1815), 4 Camp.

decided that a solicitor guilty of negligence, by reason of which all the previous steps taken in an action entrusted to him became useless, could obtain nothing for his labour.

In the Admiralty Court it is well understood that a seaman may wholly forfeit, by drunkenness or other misconduct, his right to wages. Desertion formerly always involved this result (*z*); but the Merchant Shipping Act has invested the Court with discretion as to this (*a*). It is said to have been laid down by Lord Stowell (*b*) that "any acts which will justify a master in discharging a seaman during the voyage will also deprive the seaman of his wages." This rule, however, is not followed, at all events in the case of ordinary seamen. Thus a common sailor will not, though a mate or other person in authority might, forfeit his wages for having been once drunk. To warrant this there must be habitual drunkenness or mutinous conduct, or gross disobedience, or conduct endangering the safety of the ship (*c*).

In *The Thomas Worthington* (*d*), Dr. Lushington thus indicates the principles on which the Court acts: "Cases, indeed, may occur, even in this Court, where the misconduct may be of so gross a description that, independent of any actual loss sustained by the owners, the entire forfeiture of wages would ensue; as, for instance, if a master had attempted to commit barratry; or if throughout a voyage he had shown gross incapacity, or had been constantly drunk.

134. (Value of goods lost by a servant deducted from wages due; it being part of the agreement between plaintiff and defendant that the former should pay out of his wages for the value of goods which were intrusted to him, and which were lost by his negligence.) *Duncan* v. *Blundell* (1820), 3 Sta. 6; *Chapel* v. *Hickes* (1833), 2 Cr. & M. 214; *Cleworth* v. *Pickford* (1840), 7 M. & W. 314; *Turner* v. *Draper* (1841), 2 M. & G. 241; *Newton* v. *Forster* (1844), 12 M. & W. 772. It is submitted that in cases where the original contract was to pay so much, subject to certain deductions, it would still be unnecessary to counterclaim.

(*z*) *The Pearl* (1804), 5 C. Rob. 224; Machl. on Merchant Shipping, 240.

(*a*) 17 & 18 Vict., c. 104, s. 243.

(*b*) *The Exeter* (1799), 2 C. Rob. 261. Dr. Lushington in *The Blake* (1839), 1 W. Rob. 73. No such expressions are found in the report of *The Exeter*, in 2 C. Rob. 261.

(*c*) *The Malta* (1828), 2 Hag. 158; *The Gondolier* (1835), 3 Hag. 190; *The Blake* (1839), 1 W. Rob. 73; Maclachlan, 231.

(*d*) (1848), 3 W. Rob. 128, 133; Maclachlan, 231.

In either of these cases, would this Court be justified in pronouncing for any part of his wages under the contract? Unquestionably not; and, if any such case came before me, I should not hesitate for a single moment in rejecting his claim *in toto*."

It is sometimes laid down that a master cannot set-off, by way of equitable defence, damage sustained in consequence of goods having been lost by a servant's negligence (*e*). Now, however, under the Judicature Acts, Order XIX., r. 3, "a defendant in an action may set off, or set up, by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof" (*f*). Under the Employers and Workmen Act, 1875 (38 & 39 Vict., c. 90, s. 3, subs. 1), the County Court "may adjust and set-off, the one against the other, all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the Court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise" (*g*).

(*e*) *Le Loir* v. *Bristow* (1815), 4 Camp. 134.

(*f*) *Alderson* v. *Maddison* (1881), 50 L. J. Q. B. 466. (Action brought by the plaintiff as heir-at-law to recover title-deeds of certain property. The defendant, who had been for some years in the service of the intestate T. A. as housekeeper, counterclaimed for a declaration that she was entitled to a life estate in a farm. At the trial the jury found that the defendant was induced to serve T. A. as housekeeper by a promise made verbally to her to make a will, leaving her a life interest in the farm. The Judge entered judgment for the defendant; but the Court of Appeal set it aside on the ground that the contract related to land, and that there had not been part performance sufficient to take the case out of the Statute of Frauds.)

(*g*) *Hindley* v. *Haslam* (1878), L. R. 3 Q. B. D. 481.

Wages, when and how payable.

A master is responsible for the payment of wages, even though the servant has been hired by the bailiff or overseer (*g*) It is sometimes said that at Common Law wages are due and payable when they are earned, but in practice this point is governed by custom or the terms of the contract. In *Ridgway* v. *Hungerford Market Co.* (*h*), the Court thought that evidence of successive quarterly payments of the salary of a clerk was sufficient to show that he was entitled to payment of his salary quarterly, although the minutes of his appointment in the company's books merely mentioned an annual salary, and did not mention the periods at which it was payable. So far as seamen are concerned, the time of payment of wages is fixed by the Merchant Shipping Act (17 & 18 Vict., c. 104, ss. 182, 187). In the case of ships in the home trade, it is two days after the termination of the agreement, or at the time when the seaman is discharged, whichever first happens.

The Legislature has in various statutes imposed restrictions on the mode of paying wages. Thus, in the Truck Act (1 & 2 Will. IV., c. 37), it has laid it down that contracts for the hiring of artificers are to be paid in current coin and not in goods (*i*). So in the Coal Mines Regulation Act (35 & 36 Vict., c. 76, s. 16), and the Metalliferous Mines Regulation Act (35 & 36 Vict., c. 77, s. 9), it is enacted that wages shall not be paid at any public-house or beershop to persons employed at any mine to which the Acts apply (*j*).

(*g*) *Nabonie* v. *Scott* (1815), Hume, Decisions, 353.

(*h*) (1835), 4 N. & M. 797 ; 3 A. & E. 171.

(*i*) See Part II. Chapter IV.

(*j*) Wages may be recovered in the County Courts, or proceedings may be taken under the Employers and Workmen Act, 1875 (38 & 39 Vict., c. 90, s. 4), Part II., Chapter XIV. As to recovery of wages of seamen, see 17 & 18 Vict., c. 104, s. 187 ; 43 & 44 Vict., c. 16, s. 11 ; 31 & 32 Vict., c. 71, s. 3, subsec. 2. County Courts which have Admiralty jurisdiction may entertain claims for wages when amount claimed does not exceed £150. As to

Subject to what is hereinafter stated, servants of a company are not entitled in full, in priority to other creditors, to any part of their wages or salary, and the winding-up order is notice of their discharge (*k*). In a case, however, decided by Page Wood, V.C., where an official liquidator was appointed and there was actual business to transact after the winding-up, it was held that a servant of a company engaged for a period terminating 1st July, 1870, was entitled to the present value of an annuity ending at that date (*l*).

It must be added, however, that in *Re Norton Iron Works Co.* (*m*), Jessel, M.R., and in *Re Association of Land Financiers* (*n*), Malins, V.-C., made orders for payment in full of workmen's wages in priority to all other debts after presentation of petition for winding-up, on the strength of the tenth section of the Judicature Act, 1875, which assimilates the rules in winding up, companies to the rules in bankruptcy. "In bankruptcy," said Malins, V.-C., "servants had priority to the extent of £50, and it appears to me that it must have been the

remedies of married women, see 45 & 46 Vict. c. 75, and Chapter VI. As to infants' remedies for wages, Judicature Acts, Ord. XVI. r. 8 (infants to sue as plaintiffs by their next friends); County Court Rules, 1875, Ord. V., r. 7 (ditto); Ord. IV. r. 9 (next friend to be responsible for costs); 9 & 10 Vict. c. 95, s. 64 (infant may sue for "any sum of money not greater than twenty pounds which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age"). Where under sect. 1 of the County Courts Act, 1875, the leave of the judge or registrar is required for the issue of a default summons, such leave may be given in all cases except where the affidavit given in Schedule A. to the Act discloses "that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour;" but no such leave is required if the action be for the price, value, or hire of good sold and delivered, or let on hire to the defendant, to be used or dealt with in the way of his trade, profession, or calling. Ord. IV. r. 5.

(*k*) *Chapman's Case* (1866), L. R. 1 Eq. 346.

(*l*) *Yelland's Case*, (1867), L. R. 4 Eq. 350.

(*m*) (1877), 26 W. R. 53.

(*n*) (1881), L. R. 16 Ch. D., 373; and see *In re Albion Steel and Wire Co.* (1878), L. R. 7 Ch. D. 547, where Jessel, M.R., took a narrower view of the tenth section. *Shirreff's Claim* (1872), L. R. 14 Eq. 417; 42 L. J. Ch. 5. (Shirreff, manager of a company; by articles of association, it was provided that if he should be dismissed, the company were to pay him the full amount of money paid upon his shares in the company. The company ordered to be wound up; S. held entitled to prove in winding up for the sum specified, subject to a set-off of money paid to him as remuneration for being liquidator.) See the Stannaries Act of 1869 (32 & 3 Vict. c. 19 . 6).

intention of the Legislature to extend this rule to windings up. It is an obvious act of justice, and it is monstrous to suppose that the Legislature could have intended the servants of a company to be utterly destitute when that is not the rule in bankruptcy, and the Legislature has said the same rules as to unsecured creditors are to prevail in windings up."

Effect of Bankruptcy on Wages.

By the Bankruptcy Act of 1869 (32 & 33 Vict. c. 71), sec. 32, it is enacted as follows: "The debts hereinafter mentioned shall be paid in priority to all other debts. Between themselves such debts shall rank equally, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves; that is to say:" (1.) Parochial or other local rates, assessed taxes, land tax, and property or income tax; (2.) "All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication, not exceeding four months' wages or salary, and not exceeding fifty pounds; all wages of any labourer or workman in the employment of the bankrupt at the date of the order of adjudication, and not exceeding two months' wages" (*o*). Sect. 90 says: "Where the bankrupt is in receipt of a salary or income other than as aforesaid" (officer of army or navy, officer or clerk in the civil service, or in the enjoyment of any pension or compensation granted by the Treasury), "the Court upon the application of the trustee shall make such order for the payment of such salary or income, or of any part thereof, to the trustee during the bankruptcy, and to the registrar if necessary after the close of the bankruptcy, to be applied by him in such manner as the Court may direct."

(*o*) This section does not apply to compositions under s. 126; *Ex parte Walter* (1873), L. R. 15 Eq. 412; 42 L. J. Bank. 49; 21 W. R. 523.

The Act does not define "clerk or servant;" but the decisions which are cited (see Appendix A.), turned on similar clauses in the previous Acts, 6 Geo. IV. c. 16, s. 48, and 5 & 6 Vict. c. 122, ss. 28, 29, and 12 & 13 Vict. c. 106, ss. 168 and 169 (*p*).

Sect. 15, sub-sect. 2, of the Act of 1869, states that, "The tools (if any) of his (the bankrupt's) trade, and the necessary wearing apparel and bedding of himself, his wife, and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole," do not pass to the trustee.

Attachment of Wages.

The Wages Attachment Abolition Act of 1870, the 33 & 34 Vict. 30, sect. 1, enacts "that, after the passing of this Act, no order for the attachment of the wages of any servant, labourer, or workman shall be made by the judge of any Court of Record or inferior Court" (*q*).

Executors, Legacies, &c.

Notwithstanding some *dicta* to the contrary, servants do not seem entitled to any preference for their wages from executors (*r*). It was in effect laid down by Lord Hardwicke in *Richardson* v. *Greese* (*s*), that, contrary to the well-known rule of equity, legacies to servants were not to be taken to be in satisfaction of debts due to them for wages; but the true view appears to be, that while a legacy equal to or in excess of such a debt will be taken to be in satisfaction of

(*p*) See Appendix A.

(*q*) Salary payable quarterly, and not due until a future date, cannot be attached under Ord. XXIV., rr. 3 & 4, of County Court Rules; *Hall* v. *Pritchett* (1877), L. R. 3 Q. B. D. 215; 47 L. J. Q. B. 15; 37 L. T. 571; *Ex parte Wicks* (1881), L. R. 17 Ch. D. 70; *Gordon* v. *Jennings* (1882), L. R. 9 Q. B. D. 45; 46 L. T. 534; 51 L. J. Q. B. 417: (salary of £200 a year of a secretary to a company not "wages" of a "servant" within the Act).

(*r*) Williams on Executors, 1029 n.

(*s*) (1743), 3 Atk. 69.

it, the Court will infer a contrary intention from slight circumstances. Thus, a legacy bequeathed by an old lady to a servant was held by Lord Hardwicke to be not in satisfaction of wages due, because the legacy was made payable one month after the death of the testatrix (*t*).

Presumption of Payment of Wages.

Claims for wages are subject to the Statutes of Limitations, 21 James I., c. 16, and (as to seamen's wages) to 4 Anne, c. 16, ss. 17, 18, and 19, and are barred within six years. In one case a steward, who had permitted his master to retain his salary from time to time in his hands, was allowed after his master's death in an administration action to claim an account of arrears of twenty years (*u*). It is laid down in several cases, that if a servant has left his employer's service a considerable time without making a claim for wages, payment of all wages will be presumed. Such a view was stated by Abbott, C.J. (*v*), Parke, B. (*x*), and Gaselee, J. (*y*); but the proposition does not appear to be one of law, but merely an inference of good sense, almost irresistible in the case of servants who are wont to be paid weekly or at other short intervals.

(*t*) Cited in *Mathews* v. *Mathews* (1755), 2 Ves. Sen. at p. 636; Williams on Executors, 1304; Roper on Legacies, 1053.

(*u*) *Re Hawkins* (1880), 28 W. R. 240. (It was the practice of a master and steward to allow the steward to retain his salary out of money in his hands; in an action by executor of master, held that the steward might claim in account his salary for twenty years.) See also *Banner* v. *Berridge* (1881), L. R. 18 Ch. D. 254. *Rishton* v. *Grissell* (1870), L. R. 10 Eq. 393; 18 W. R. 821. (The plaintiff, defendant's manager, was held not entitled, in absence of fraud, to interest on each overbalance from the year at which it was ascertained, but only from the time of demand). *Pearse* v. *Green* (1819), 1 Jac. & W. 135; *Teed* v. *Beere* (1859), 24 L. J. Ch. 782.

(*v*) See *Sellen* v. *Norman* (1829), 4 C. & P. 81 *a*; *Lucas* v. *Nodisiliski* (1795), 1 Esp. 296. Interest not allowed on claims for work and labour; *Trelawney* v. *Thomas* (1789), 1 H. B. 303; *Milsom* v. *Howard* (1821), 9 Price 134.

(*x*) *Gough* v. *Findon* (1851), 7 Ex. 50.

(*y*) *Sellen* v. *Norman* (1829), 4 C. & P. 80.

Insurance of Wages.

Insurance of seamen's wages is invalid as being contrary to public policy (*a*). On the other hand, it was always permissible for a master to insure his wages (*b*).

(*a*) *The Juliana* (1882), 2 Dod. 509; *The Neptune* (1824), 1 Hag. 239.

(*b*) *King* v. *Glover* (1806), 2 B. & P. N. R. 206. Seamen were not allowed to insure their wages, chiefly because their wages depended on earning freight. This being no longer the case, is the rule in force?

APPENDIX A.

SERVANT.

Ex parte Neal (1829), Mont. & Mac. 194. Traveller engaged at annual salary, within 6 Geo. IV., c. 16, s. 48.

Ex parte Gough (1833), 3 D. & C. 189; Mont. & Bli. 417. A clerk, though at the time he was engaged his master was not a trader within the meaning of the Bankruptcy Acts, if the petitioner was, in fact, at the time of the commission, clerk to such a trader.

Ex parte Humphreys (1833), 3 D. & C. 114; Mont. & Bli. 413. A general hiring of a clerk, with the reservation that the wages are to be paid weekly within 6 Geo. IV., c. 16, s. 48.

Ex parte Collyer (1834), 2 Mont. & A. 29; 4 D. & C. 520. A manager of a cotton mill paid so much a year in weekly sums.

Ex parte Sanders (1836), 2 Mont. & A. 684; 2 Dea. 40. A clerk compelled to leave the bankrupt's service several months before the bankruptcy on account of his master's inability to pay salary, and his master having assigned all

NOT SERVANT.

Ex parte Grellier (1831), Mont. 264, reversing Mont. & Mac. 95. Under 6 Geo. IV., c. 16, s. 48. The workmen of a coach-maker who worked by the piece, and who got a specific sum for each job.

Ex parte Crawfoot (1831), Mont. 270. Weekly labourers, excavators, bricklayers.

Ex parte Skinner (1833). Mont. & Bli. 417. Guard of a coach at weekly wages not within 6 Geo. IV., c. 16, s. 48. See *Ex parte Collyer*, correcting the report of this case. The hiring need not be for a year, but must be of longer duration than a week.

Ex parte Bennett (1838), 3 Mont. & A. 669. A clerk who voluntarily leaves insolvent master not within 6 Geo. IV., c. 16, s. 48.

Ex parte Gee (1839), Mont. & C. 99. A clerk who has involuntarily quitted the bankrupt's service nine months previous to the fiat by reason of the approaching insolvency and the decreasing business of the bankrupt, the clerk in the meanwhile getting employ-

Servant.	Not Servant.
his estates and effects; entitled to six months' wages.	ment elsewhere, not within the Act.
Ex parte Homborg (1842), 2 Mont. D. & De G. 642. The mate of a vessel hired by master, who was part owner, within sec. 48 of 6 Geo. IV., c. 16.	*Ex parte Ball* (1853), 3 De G. M. & G. 155. "Drawers" who were paid by and attached to the colliers employed by the bankrupt, and who were in attendance on the colliers.
Ex parte Harris (1845), 9 Jur. 497; De Gex, 165. Clerk entitled, though absent from business owing to ill health for three months before the bankruptcy.	*Ex parte Simmons* (1858), 30 L. T. 311. A clerk paid by commission on the goods sold by him, and not at a fixed salary, not within sec. 168 of Act 1849.—Commissioner Fane.
Ex parte Hickin (1850), 14 Jur. 405; 3 De. G. & S. 662. Petitioner entered service of bankrupt as book-keeper and cashier in 1844; continued as such until December, 1848, without coming to agreement as to salary. It was then agreed that the salary should be £250 a year from 1844; the reason why no earlier arrangement was made being that the bankrupt led petitioner to believe that he should share in the profits of a certain patent.	*Ex parte Butler* (1857), 28 L. T. M. 375. A person who was employed as accountant at an annual salary of £120, and who was the petitioning creditor in respect of salary upon which the adjudication issued, not a servant within 168 sec. of Act of 1849. — Commissioner Goulburn.
Ex parte Oldham (1858), 32 L. T. 181. A clerk to a custom house agent, engaged his evenings in the bankrupt's services, held entitled to allowance under 168 sec. of Act of 1849.—Commissioner Goulburn.	*Ex parte Harcourt* (1858), 31 L. T. 188. A singer at a tavern not within the Act of 1849.—Commissioner Fane.
Ex parte Chipchase (1862), 11 W. R. 11; 7 L. T. N. S. 290. A city editor of a newspaper employed at a weekly salary; engagement terminable at month's notice.	*Ex parte Walter* (1873), L. R. 15 Eq. 412; 42 L. J. B. 49; 21 W. R. 523. A non-resident music-master and a drill-sergeant engaged to attend a school twice a week at a certain rate per hour or per lesson, not preferential creditors within sec. 32, sub-sec. 2 of the Act of 1869.
	Ex parte Hampson (1842), 2 Mont. D. & De G. 462. Question considered but not decided, whether misconduct by servant or clerk is a good ground for refusing payment.

In *Ex parte Hampson*, 2 Mont. D. & De G., p. 468, it was said that a clerk must wait till there is a sufficient sum for payment of his demand after the expenses of working the fiat have been provided.

Servants are not bound to wait until the trustee has examined the debtor as to his affairs: *Ex parte Powis* (1873), L. R. 17 Eq. 130. See as to proof for proportion of salary, which would have accrued after winding up, *Yelland's Case* (1867), L. R. 4 Eq. 350; *Clark's Case* (1869), L. R. 7 Eq. 550; 38 L. J. Ch. 562; 20 L. T. N. S. 774; *Ex parte Llynvi Coal Co.* (1871), L. R. 7 Ch. Ap. 28.

CHAPTER XIV.

DURATION OF THE CONTRACT.

It is the duty of a master to receive his servant into his employment, and to retain him in his service for the time agreed upon.

In the absence of circumstances showing an intention or custom to the contrary, hiring will be presumed to be for a year (*a*), or, as it is often expressed, general hiring or hiring when no term is fixed is presumed to be a yearly hiring. This presumption, it has been said, was established in order to give master and servant the benefit of all the seasons (*b*). A more probable explanation of it is that it arose in consequence of the statutory enactment (5 Eliz. c. 4, sections 3 and 7, and other statutes), long in force, that hirings should be by the year. The presumption is limited, according to some judges, to servants in husbandry (*c*); but the weight of authority appears to show that it is applicable to

(*a*) Coke Litt. 42 b. : "If a man retain a servant generally without expressing any time, the law shall construe it to be for one year, for that retainer is according to law." *Fawcett* v. *Cash* (1834), 3 N. & M. 177; 5 B. & Ad. 904. (Hiring of a warehouseman, wages payable monthly.) *Beeston* v. *Collyer* (1827), 4 Bing. 309; 12 Moore, 552; 2 C. & P. 607; (hiring of a clerk at monthly wages); *Turner* v. *Robinson* (1833), 2 N. & M. 829; *Huttman* v. *Boulnois* (1826), 2 C. & P. 510; *Green* v. *Wright* (1876), L. R. 1 C. P. D. 591. In America a general hiring is regarded as *primâ facie* a hiring at will. Wood, 272.

(*b*) Story on Contracts, s. 1290.

(*c*) *Huttman* v. *Boulnois*, see note (*a*).

all kinds of servants (*d*). It exists whether a contract be in writing or not (*e*), and even if it be conditional (*f*).

This presumption is not irrebuttable (*g*); it may be displaced by stipulations in the contract as to times of payment, or by other circumstances. It does not exist when there really is no hiring or agreement to retain. Thus, in *Bayley* v. *Rimmell* (*h*), the plaintiff served the defendant as assistant surgeon for nearly half a year without a specific contract of hiring; and had been paid various sums at no fixed periods. He fell ill and did not return to his employment. In an action by the plaintiff for remuneration, on behalf of the defendant it was contended that he could not recover anything, as the hiring was for a year. But the Court decided that the plaintiff might recover on a *quantum meruit* for the services which he had actually performed. In practice the presumption is no sure guide. No precise rules on the subject can be laid down; each case must be considered by itself. The following considerations, however, may be useful as guides: (1.) The circumstance that payment of wages takes place weekly or monthly is strongly in favour of the view that a hiring is for a week or a month; if this circumstance stand by itself, it will be conclusive as to the duration of the contract (*i*). (2.) This fact may be modified by others, as was pointed out in *Davis* v. *Marshall* (*k*). Yearly servants often stipulate for the payment of their wages at short intervals; and an arrangement to pay weekly or monthly may be merely for the convenience of a yearly servant. (3.) The nature of

(*d*) *Lilley* v. *Elwin* (1848), 11 Q. B. 742; *Turner* v. *Robinson*, see note (*a*); *Holcroft* v. *Barber* (1843), 1 C. & K. 4; *Baxter* v. *Nurse* (1844), 1 C. & K. 10; 6 M. & G. 938; 13 L. J. C. P. 82.

(*e*) *Elderton* v. *Emmens* (1847—1853), 4 C. B. 479; 6 C. B. 160; 13 C. B. 495; 4 H. of L., 624.

(*f*) *R.* v. *Sandhurst* (1827), 7 B. & C. 557; *R.* v. *Byker* (1823), 2 B. & C. 114.

(*g*) See Tindal, C. J., in *Baxter* v. *Nurse*, see note (*d*), (hiring of editor of a new periodical), and Pollock, C. B., in *Fairman* v. *Oakford* (1860), 5 H. & N. 635; 29 L. J. Ex. 459.

(*h*) (1836), 1 M. & W. 506.

(*i*) *R.* v. *St. Andrew's* (1828), 8 B. & C. 679; *R.* v. *Newton* (1788), 2 T. R. 453, *per* Buller, J. So in *R.* v. *Dodderhill* (1814), 3 M. & S. 243.

(*k*) (1861), 4 L. T. N. S. 216; 9 W. R. 520.

the employment must also be taken into account. It makes a material difference in this point of view, whether the servant be a labourer or a secretary, an editor or a sub-editor or an accountant. It is improbable that persons of education holding highly paid offices would consent to very short terms of engagement. (4.) Custom often governs the matter. Thus, in an action for wrongful dismissal of the editor of a periodical, evidence was given that it was the usage that editors, sub-editors, and reporters, and all who are regularly employed upon a newspaper, in supplying a particular department, are engaged for a year, unless there is an express agreement to the contrary (*m*). See *Holcroft* v. *Barber* (*n*), (5.) Service for more than a year without an express contract of hiring, or under a contract, but for no definite period, will be evidence of a yearly hiring, even if the contract be conditional (*o*).

There is an important peculiarity of the hiring of domestic or menial servants. By a long and well established custom, it is settled that in the absence of any agreement to the contrary, their hiring is for a year and subject to determination on a month's notice by either or payment of a month's wages by the employer. "In the case of domestic servants," said Littledale, J., in *Fawcett* v. *Cash* (*p*), "the rule is well established that the contract may be determined by a month's notice or a month's wages." The month's wages are to be regarded as the maximum damages. Who are domestic or menial servants has been the subject of a considerable number of actions which are referred to below (*r*).

(*m*) *Baxter* v. *Nurse*, see note (*d*).

(*n*) (1843), 1 C. & K. 4.

(*o*) *R.* v. *Lyth* (1773), 5 T. R. 327 ; *R.* v. *Pendleton* (1812), 15 East, 449 ; *R.* v. *Worfield* (1794), 5 T. R. 506 ; *R.* v. *Byker* (1823), 2 B. & C. 114. See Appendix.

(*p*) See note (*a*) ; so Parke, B., in *Turner* v. *Mason* (1845), 14 M. & W. 112.

(*r*) MENIAL — *Nowlan* v. *Ablett* (1835), 2 C. M. & R. 54 ; 1 Gale, 72 ; 5 Tyr. 709. (A head gardener with several under gardeners subject to his directions, and not living in the master's dwelling-house but on his grounds.) *Johnson* v. *Blenkensop* (1841), 5 Jur. 870. (A servant hired to keep the gardens and pleasure-grounds in order, to assist in the stables, and to make himself generally useful.) *Nicoll* v. *Greaves* (1864), 17 C. B. N. S. 27 ; 10 Jur. N. S. 919 ; 33 L. J. C. P. 259 ; 12 W. R. 961 ; 10 L. T. N. S. 531. (A huntsman a menial servant, though hired for a year.) NOT MENIAL — *Todd* v. *Kerrich* (1853), 8 Ex. 151 ; 17 Jur.

The question is one of extreme difficulty, especially when the situation of the servant is of a novel kind. The cases cited below show that living in the master's house is not a decisive test. If the nature of the service bring a person into close and frequent contact with his master, where, to quote Erle, C.J., in *Nicoll* v. *Greaves* (*s*), "the service is of such a domestic nature as to require the servant to be frequently about his master's person, or as in the case of the gardener about his grounds," the servant is generally considered a domestic or menial servant. Having regard, however, to the common use of the word "menial," and also to the judgment of the Court in *Todd* v. *Kerrich* (*t*), only servants holding an inferior situation in a household would be regarded as menial servants.

No clear rule as to length of notice to be given to servants other than menial or domestic servants exists. The custom above stated does not apply to trade servants or servants in husbandry (*u*), clerks (*x*), newspaper reporters (*y*), or governesses (*a*).

The question of duration of agreements is often one of construction of the agreement of hiring. In an Irish case decided in 1861, where the agreement was, "I agree to serve Major B. as steward from May 31st, 1858, for £80 per annum, &c., three months' notice required on each side," it was held that the hiring was a yearly one, subject to be determined by either party by giving three months' notice before the end of the year (*b*). In *Down* v. *Pinto* (*c*), the defendants, who had established smelting works in Spain, offered to employ the plaintiff as foreman, on the following terms: "I should require

119; 22 L. J. Ex. 1. (A governess engaged at yearly salary.) The month's wages are for a calendar month, and do not include board wages. Hill, J., in *Gordon* v. *Potter* (1859), 1 F. & F. 644. As to etymology of "menial," see *Nowlan* v. *Ablett*, and Littré's Dictionary, under head of *Ménie*.

(*s*) See note (*r*).

(*t*) See note (*r*).

(*u*) *Lilley* v. *Elwin* (1848), 11 Q. B. 742.

(*x*) *Beeston* v. *Collyer* (1827), 4 Bing. 309; *Huttman* v. *Boulnois* (1826), 2 C. & P. 510.

(*y*) *Williams* v. *Byrne* (1837), 7 A. & E. 177; 1 Jur. 578.

(*a*) *Todd* v. *Kerrich* (1853), 8 Ex. 151.

(*b*) *Forgan* v. *Burke*, 12 Ir. C. L. 495.

(*c*) (1854), 9 Ex. 327.

you to enter into an engagement to remain with me for at least three years, at my option. Salary, £250 per annum." The Court thought that there was a yearly hiring, and that "at my option," did not enable the plaintiff to terminate the agreement at any time. "These words mean that the defendants are to have the option of saying whether the service shall continue for one, two, or three years."

In *Brown* v. *Symons* (*d*), there was an agreement to employ the defendant as a commercial traveller at a yearly salary, which was payable quarterly; the agreement to "be binding between the parties for twelve months certain from the date hereof, and continue from time to time until three months' notice in writing be given by either party to determine the same." Transposing the words the Court read the agreement as if it ran thus: "This agreement to continue from time to time until three months' notice, &c., but to be binding between the said parties for twelve months certain." It was an agreement for twelve months certain and no more. In *Parker* v. *Ibbetson* (*e*), there was an agreement in writing to serve as agent or representative of a manufacturer of woollen and mohair cloths, at a salary of £150 a year, and a proviso that if at the end of the year the plaintiff had done sufficient business the defendant would make up his salary to £180. It was held that there was nothing in the contract to exclude an usage to terminate it by either party giving a month's notice.

This matter is often provided for by regulations of the factory, mine, or workshop in which workmen are employed. When the contract is silent as to this point, the period of notice or warning is to be governed by the usage or the custom of the trade, profession, or business. Where both custom and contract are silent as to this, it will be for a jury to say what is reasonable in all the circumstances.

(*d*) (1860), 8 C. B. N. S. 208; 29 L. J. C. P. 251.

(*e*) (1858), 4 C. B. N. S. 346; 27 L. J. C. P. 236. On the other hand, see *Peter* v. *Staveley* (1866), 15 L. T. N. S. 275.

Thus in *Hiscox* v. *Batchellor* (*g*), and *Foxall* v. *International Land Credit Co.* (*h*), Byles, J., left it to the jury to say what was reasonable notice in the case of an advertising agent and a clerk.

In *Green* v. *Wright* (*i*), the contract gave the defendants, who were owners of a ship, power to dismiss a master abroad without notice. The Court refused to hold that a like right existed when the master was in this country. "He was entitled to some, and that is, to reasonable notice."

(*g*) (1867), 15 L. T. N. S. 543.
(*h*) (1867), 16 L. T. N. S. 637.
(*i*) (1876), L. R. 1 C. P. D. 591. The Courts have sometimes refused to follow the analogy of notices for the expiration of tenancies, which must be given so as to terminate at the end of the current year. Thus in *Ryan* v. *Jenkinson* (1855), 25 L. J. Q. B. 11, a schoolmaster was appointed, "at the rate of £55 per annum." His appointment was to be subject to termination by three months' notice from either party. The Court thought that the notice need not be given so as to terminate at the end of a current year. In *Beeston* v. *Collyer* (1827), 4 Bing. 309, the Court refused to say whether the rule as to notice in case of tenancies was to be engrafted on contracts for the hire of servants. In *Kein* v. *Hart* (1868), 2 I. R. C. L. 138; 3 I. R. C. L. 388, the Court had before it an agreement in which the words were, "This agreement shall stand good for the term of six months, and six months' notice from either side shall terminate the agreement." The Judges thought that the agreement was capable of being terminated by a six months' notice, expiring at any time after first six months. The same case may be consulted as to what words constitute a notice. See further as to notice, *Fawcett* v. *Cash* (1834), 5 B. & Ad. 904; *Williams* v. *Byrne* (1837), 2 N. & P. 139; 7 A. & E. 177 (newspaper reporter); *Broxham* v. *Wagstaffe* (1841), 5 Jur. 845 (chemist's assistant); *Turner* v. *Mason* (1845), 14 M. & W. 112; *Metzner* v. *Bolton* (1854), 9 Ex. 518 (commercial traveller).

APPENDIX A.

YEARLY HIRING.

Rex v. *Stockbridge* (1773), Bur. S. C. 759. Postilion served for a year; nothing said as to wages; yearly hiring.

Rex v. *Macclesfield* (1789), 3 T. R. 76. Servant hired for eleven months at 10 guineas; at the expiration of the time told by his master "You may as well stay on an end in your place;" servant assented; second agreement a

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Rex v. *Dedham* (1769), Bur. S. C. 653. Glazier hired at the wages of 6*s.* a week; summer and winter.

Rex v. *Newton Toney* (1788), 2 T. R. 453. Ostler hired "at 4*s.* 6*d.* a week;" weekly hiring.

Rex v. *Odiham* (1788), 2 T. R. 622. Service for a year at so much a week without fixing any time of service; no yearly hiring.

Rex v. *St. Peters* (1763), Bur.

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general hiring.

Rex v. *Seaton* (1784), Cald. 440. Wages payable weekly; promise to stay another year.

Rex v. *Birdbrooke* (1791), 4 T. R. 245. Labourer agrees to serve farmer "at 3*s.* per week the year round."

Rex v. *Hampreston* (1791), 5 T. R. 205. Serve at so much a week with liberty to part on a month's notice.

Rex v. *Lyth* (1793), 5 T. R. 327. A husbandman served for a year; strong evidence of hiring for a year.

Rex v. *Long Whatton* (1793), 5 T. R. 447. Service with the same master for three years evidence of hiring for a year, though servant at first hired only for part of a year. See also *Rex* v. *Hales* (1794), 5 T. R. 668; *Rex* v. *Worfield* (1794), 5 T. R. 506.

Rex v. *Pendleton* (1812), 15 East, 449. Hiring for a year presumed from service for three years.

Rex v. *Great Yarmouth* (1816), 5 M. & S. 114. Hiring at weekly wages, either party to be free to part at a month's notice; held to be a yearly hiring, though the case stated that the servant let himself by the week.

Beeston v. *Collyer* (1827), 4 Bing. 309. Defendant entered plaintiff's service as clerk in 1793; was paid quarterly in 1811; during last six years the salary was paid monthly.

Rex v. *St. Martins* (1828), 8 B. & C. 674. Yearly hiring of a boots and tap-boy inferred from service for three years and a quarter, and the fact that the master had retained him after the fortnight for which he had at first invited him to stay.

Rex v. *St. Andrews* (1828), 8 B. & C. 679. Hiring at £1 a week with a month's notice or a month's wages; yearly hiring.

Stiff v. *Cassell* (1856), 2 Jur. N. S. 348. Contract by author to write tales for a weekly publica-

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S. C. 513. Hiring at so much and to part on a week's notice, not a hiring for a year, though servant continued six years with her master.

Rex v. *Pucklechurch* (1804), 5 East, 382. Servant hired himself in the first instance for eight weeks, and afterwards to the same master for less than a year at weekly wages; then entered into new agreement with same master at weekly wages, nothing said as to duration of service; weekly hiring.

Rex v. *Mitcham* (1810), 12 East, 351. Hiring at so much a week for as long time as master and servant could agree; a weekly hiring.

Rex v. *Dodderhill* (1814), 3 M. & S. 243. Servant hired to serve for weekly wages of 4*s.* and board and washing, except in the harvest month, when wages to be 10*s.* 6*d.*

Rex v. *St. Mary* (1815), 4 M. & S. 315. Hiring at so much a week and 2 guineas for harvest; not yearly hiring.

Rex v. *Rolvenden* (1815), 1 M. & R. 691. Ostler hired at so much a week for the winter and so much for the summer; weekly hiring.

Rex v *Elsack* (1785), 2 Bott, 203. Maidservant hired "at 1*s.* 4*d.* a week and board and lodging for so long as they should want;" weekly hiring.

R. v. *Woodhurst* (1818), 1 B. & Ald. 325. Agreement to serve from Michaelmas to Michaelmas, and to make 70,000 bricks at a stipulated price.

Rex v. *Christ's Parish* (1824), 3 B. & C. 459. Boy entered service of farmer for meat and clothes as long as he had a mind to stop; hiring at will.

Rex v. *Warminster* (1826), 6 B. & C. 77; 9 D. & R. 70. Hiring at 6*s.* a week for winter and 9*s.* a week for summer, nothing being said as to duration of service.

Rex v. *Ardington* (1834), 1 A. &

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tion, "extending over the period of one year," to be paid £10 a week for each number; matter to be supplied each week.

Turner v. *Robinson* (1833), 5 B. & Ad. 789. Foreman of silk manufacturers; wages to be "at the rate of £80 a year;" yearly hiring.

Fawcett v. *Cash* (1834), 5 B. & Ad. 904. Plaintiff entered the service of defendant under the following agreement: "Plaintiff engages to pay defendant £12 10*s.* per month for the first year, and advance £10 per annum until the salary is £180, from the 5th of March, 1832;" contract for at least a year.

Down v. *Pinto* (1854), 9 Ex. 327. See p. 170.

Brown v. *Symons* (1860), 8 C. B. N. S. 208; 29 L. J. C. P. 251. See p. 171.

Davis v. *Marshall* (1861), 4 L. T. N. S. 216; 9 W. R. 520. Plaintiff, manager of a shop under an agreement by which he was to receive a salary of £30 payable monthly; hiring for a year.

Buckingham v. *The Surrey and Hants Canal Co.* (1882), 46 L. T. N. S. 885. Plaintiff appointed engineer to defendants at a salary of £500 a year; dismissed at a three months' notice. A yearly hiring; plaintiff entitled to recover salary for the unexpired portion of the year.

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E. 260. A. hired a shepherd for a term less than a year ending Michaelmas, 1825; he served for a few days after Michaelmas under no new agreement; master asked him if he chose to go on with him; wages to be the same; A. continued in service until Lady Day, 1826; no yearly hiring.

Baxter v. *Nurse* (1843), 1 C. & K. 10; (1844) 6 M. & G. 938. Action by editor of "Polytechnic Review" for wrongful dismissal; evidence that by general usage editors, sub-editors, reporters, and other persons regularly employed on newspapers are employed for a year; jury found that the usage did not apply to the "Polytechnic Review," which was a new publication; application for new trial refused.

Holcroft v. *Barber* (1843), 1 C. & K. 4. Action for wrongfully dismissing an editor; evidence that any person permanently employed (not occasionally only), whether as editor, sub-editor, or reporter, to supply a particular department of a newspaper, is to be presumed to be hired for a year; the jury found for the defendant.

Butterfield v. *Marler* (1851), 3 C. & K. 163. Plaintiff, commission agent, acting for defendants; proof that for more than a year he had rendered his accounts.

Blackwell v. *Pennant* (1852), 9 Hare, 551. Servant paid weekly wages though irregularly; not yearly hiring.

Fairman v. *Oakford* (1860), 5 H. & N. 635; 29 L. J. Ex. 459. Plaintiff, a clerk of ship broker, left defendant's service, receiving a month's wages instead of notice; subsequently entered the defendant's service at a yearly salary of £250; nothing expressly said as to notice or duration of service; plaintiff paid weekly. Judge left it to the jury to say whether there was a hiring for a year, telling

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Langton v. *Carleton* (1873), 9 L. R. Ex. 57; 43 L. J. Ex. 54; 29 L. T. 650. Agreement between plaintiffs and defendant; latter engaged at salary of £200 a year payable fortnightly; the agreement between the parties to be for twelve months certain, after which time either party to be at liberty to terminate the agreement by giving the other a three months' notice; and after twelve months or before any notice shall have expired, plaintiffs may do so on payment to defendant of £50.—Bramwell, B., and Pigott, B. held that it was an agreement to expire without notice at end of twelve months, and then to continue, if the parties so pleased, until terminated by three months' notice. Kelly, C. B., thought the contract contemplated a continuance of service beyond the three months.

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them, according to the report in the *Law Journal*, that, except in the case of menial servants, there was no inflexible rule that a general hiring is for a year. The jury found no contract for a year, and the Court refused to say that there was misdirection, or that the verdict was against the weight of evidence.

Robertson v. *Jenner* (1867), 15 L. T. N. S. 514. Hiring at 2 guineas a week for a year is hiring by the week and not by the year.

Evans v. *Roe* (1872), L. R. 7 C. P. 138. Plaintiff entered service of defendants under a memorandum which, *inter alia*, said, "April 13th, 1871. I hereby agreee to accept the situation as foreman, &c., on my receiving a salary of £2 per week and house to live in from the 19th of April, 1871." Weekly hiring, and no evidence of conversation at the time of signing with a view to show yearly contract intended, was admissible.

See *Zurhorst* v. *Millinery & Dress Association*, *Times*, Feb. 25, 1882.

CHAPTER XV.

MASTER'S DUTY TO INDEMNIFY.

A MASTER is bound to indemnify his servant for all expenses or loss incurred or sustained, in obeying his lawful orders.

No express contract of indemnity is required; the law will presume from the relation of master and servant—as in fact from any other contract of agency—an obligation to hold the latter harmless from the consequences of obedience to the lawful orders of the former (*a*).

The first important exception to the rule is that a promise, expressed or implied, to indemnify a servant against the consequences of violation of a statute, or a felony or misdemeanour, or a manifest civil wrong, is of no effect. Thus a promise to indemnify a printer against the consequences of publishing a libel (*b*), or to indemnify a police constable for suffering a prisoner to escape (*c*), or for an assault (*d*),

(*a*) Story on Agency, s. 339; Wharton on Agency, s. 340; Dig. Lib. 26, 18. Pothier (Mandat, Chap. IV., s. I., A. I.) says of "L'obligation de rembourser le mandataire:" "Pour qu'il y ait lieu à cette obligation, il faut 1° que le mandataire ait déboursé quelque chose; 2° qu'il l'ait déboursé ex causa mandati; 3° qu'il l'ait déboursé sans faute, inculpabiliter."

(*b*) *Shackell* v. *Rosier* (1836), 2 Bing. N. C. 634. ("The plaintiff, at the request of the defendant, had published the libel; that is, had committed an indictable offence. What is that but saying that, in consideration that the plaintiff and defendant had combined to commit a breach of the law, the defendant promised to save the plaintiff harmless?" Tindal, C. J.) *Colburn* v. *Patmore* (1834), Cr. M. & R. 173. (Action by proprietor of a paper against an editor for publishing a libel, for which plaintiff was convicted and fined; the judges indicated their opinion that a proprietor could not recover against the editor the damages sustained by such conviction.)

(*c*) *Featherstone* v. *Hutchinson*, Cro. Eliz. 199.

(*d*) *Allen* v. *Rescous*, 2 Lev. 174; *Battersey's Case* (20 James I.), Winch 48, and *Parebrother* v. *Ansley* (1808), 1 Camp. 344; said by Story (Agency, 339) to be overruled.

would be void. In all such cases the principle that there is no contribution between tort-feasors or wrong-doers applies.

Where, however, an act is not palpably illegal, and is done honestly, in discharge of the directions of the master; where a servant does not know, and has no reasonable ground for believing, that that which he did was wrongful; where he had a right to suppose that the orders which he obeyed were lawfully given, the servant will be entitled to indemnity, even though his acts have injured others. His duty is, in general, to obey; it would be wholly unreasonable to deprive him of indemnity, where the orders are not on the face of them unlawful. The principle that at law joint trespassers cannot sue *inter se* for contribution, must in fairness be limited to cases where the servant could know that he was doing wrong. The older authorities may not support this view, but many decisions, such as *Adamson* v. *Jarvis* (*e*), and *Humphrys* v. *Pratt* (*f*), show that a principal who employs another to do an act, apparently lawful, undertakes to indemnify him against all the consequences. "The rule that wrong-doers cannot have redress or contribution against each other," says Best, C. J. in the former case (*g*), "is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act."

No distinction between *malum in se* and *malum prohibitum* exists in this point of view. A servant can no

(*e*) (1827) 4 Bing. 66. Plaintiff, an auctioneer, sold cattle which were not the property of the defendant, in whose possession they were, and who employed him; owner recovered judgment against the plaintiff for selling the cattle: held that the plaintiff was entitled to be indemnified by the defendant. Best, C.J., stated the rule thus: "Every man who employs another to do an act which the employer appears to have right to authorise him to do, undertakes to indemnify him for all such acts as would be lawful if the employer had the authority he pretends to have."

(*f*) (1831), 5 Bli. N. S. 154; 2 Dow & Clark, 288. Plaintiff, a sheriff, seized cattle under a *fi. fa.* given by defendant; owner recovered damages against plaintiff: held the plaintiff was entitled to indemnity from the defendant. See *Power* v. *Hoey* (1871), 19 W. R. 916.

(*g*) p. 73.

more recover indemnity for contravening a statute than committing a crime at Common Law; it is clear that a servant could not recover expenses incurred in smuggling goods in pursuance of the orders of his master, any more than he could recover the expenses of carrying out a conspiracy to effect a felony.

No right to indemnity will exist in respect of losses or expenses caused by the servant's failure to comply with orders or by reason of his exceeding them.

A servant can, of course, claim indemnity only for the losses which are directly due to the execution of his employer's orders. As to this point, in the Civil Law, nice distinctions are drawn (*h*). It is enough for our purpose to say that indemnity cannot be legally claimed for merely collateral losses (*i*).

In a subsequent chapter, in dealing with the duties of a master to his servant, it will be pointed out that the latter is entitled to indemnity for losses due to the want of skill or negligence on the part of the former.

It has been said that "as to servants doing an act in obedience to the master's orders, knowing the act to be unlawful, the rule, as to parties *in pari delicto* does not apply with that strictness that is given to it in cases where the party is not in any measure subject to the control of the other (*k*)." The authorities for this statement are *Smith* v. *Cuff* (*l*), *Atkinson* v. *Denby* (*m*), and the class of cases, in which embarrassed debtors, who have paid sums of money to particular creditors, in order to procure their assent to compositions, have been allowed to recover what they have so paid. Particular expressions used by Ellenborough, C. J. and Cockburn, C. J. in these cases, are wide enough to warrant the statement which we have quoted. When servants

(*h*) Pothier, Chap. III., sec. 2.
(*i*) Dig. L. XVII. tit. 1, l. 26 s. 6.
(*k*) Wood, Master and Servant, p. 397.
(*l*) (1817), 6 M. & S. 160.
(*m*) (1862), 7 H. & N. 934; 8 Jur. N. S. 1012; 31 L. J. Ex. 362.

execute illegal orders through fear of dismissal, there is, to quote the language of the former, "Oppression on the one side, and obedience on the other." No decision, however, has gone so far as to say that a servant may claim indemnity for the consequences of obeying illegal orders through fear of losing his place.

CHAPTER XVI.

MASTER'S DUTY TO PROVIDE SUSTENANCE.

It is the duty of a master to provide his (domestic) servants with wholesome and sufficient food and suitable lodging.

We read in Fitzherbert that the "keeping from the servant meat or drink is a good cause for his departure from his service" (*a*). At Common Law a master is not bound to furnish medical aid or medicine to his servant (*b*). He is not even liable upon an implied contract or otherwise if a doctor or surgeon be called in to attend a servant who is injured in the course of his employment. But slight evidence of assent—for example, interference on the part of the master, or the fact that he called in his own doctor—will suffice to fix him with liability (*c*), and he will not be permitted to deduct the charge from the servant's wages. The position of an apprentice is different; in sickness he is entitled to proper medical attendance and medicine (*d*).

Failure or neglect to provide nourishment to a servant or apprentice was in certain cases at Common Law an indictable offence. Thus in *R.* v. *Gould* (*e*), a master to whom a poor

(*a*) 168 E.

(*b*) *Newby* v. *Wiltshire* (1785), 4 Doug. 284; *Atkins* v. *Banwell* (1802), 2 East, 505; *Wennall* v. *Adney* (1802), 3 B. & P. 247. (Plaintiff's arm broken while driving defendant's team.) *Scarman* v. *Castell* (1795), 1 Esp. 270, is over-ruled.

In Scotland it would seem that a master may compel a male domestic servant to reside out of his house on paying board wages; not so a female domestic servant. *Graham* v. *Thomson* (1822), 1 S. 287.

(*c*) *Cooper* v. *Phillips* (1831), 4 C. & P. 581; *Sellen* v. *Norman* (1829), 4 C. & P. 80.

(*d*) *R.* v. *Smith*, (1837), 8 C. & P. 153.

(*e*) (3 Anne), 1 Salk. 381.

boy was put out as apprentice was indicted for refusing to provide for him. In *R.* v. *Friend* (*f*), a girl of thirteen or fourteen had been apprenticed to the prisoner. He and his wife were indicted for having refused and neglected to supply sufficient meat, drink, wearing apparel, bedding, &c. At a meeting of all the Judges, except Lord Kenyon and Mr. Justice Rooke, the opinion was expressed (Mr. Justice Chambre dissenting) that it was "an indictable offence, as a misdemeanour, to refuse or neglect to provide sufficient food bedding, &c., to any infant of tender years, unable to provide for and take care of itself (whether such infant were child, apprentice or servant), whom a man was obliged by duty or contract to provide for, so as thereby to injure its health." In the subsequent case of *R.* v. *Ridley* (*g*), Mr. Justice Lawrence confined the liability to the case of children of tender years and under the dominion of the defendant. The defects of the law having been revealed in the case of the Sloanes in 1851, the 14 & 15 Vict. c. 11, was passed.

The whole of this Act, with the exception of sections 3, 4, 5, 8 and 9, was repealed by 24 & 25 Vict. c. 95. Under section 3 a register is to be kept of young persons under the age of sixteen hired or taken as servants from any workhouse. Under section 4 such young persons hired from workhouses or bound out as pauper apprentices are to be visited periodically by the relieving officer.

The 24 & 25 Vict. c. 100, s. 26 (Offences Against the Person Act, 1861) says :—

"Whosoever, being legally liable, either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor, and being convicted

(*f*) (1802), Russ. & Ry. 22; p. 181.
Stephen's Digest of Criminal Law, (*g*) (1811), 2 Camp. 650.

thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour" (*h*).

Section 6 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), makes it an offence punishable on summary conviction to wilfully and without lawful excuse refuse or neglect to provide, when one is legally liable to do so, a servant or apprentice with necessary food, clothing, &c. (*i*).

(*h*) See also 31 & 32 Vict. c. 122, s. 37.

(*i*) Part II. Chap. XIII. As to duties of owner to provide food, medicine, &c., to seamen, see 17 & 18 Vict. c. 104, ss. 221 to 231, and 30 & 31 Vict. c. 124, s. 4; and as to sailor suing owners for not supplying medicine, *Couch* v. *Steel* (1854, 3 E. & B. 402; 23 L. J. Q. B. 121.

CHAPTER XVII.

MASTER'S DUTY TO TEACH TRADE.

It is the duty of a master to teach his apprentice the trade or profession to which he has been apprenticed.

This follows from the very nature of apprenticeship. It is in fact stipulated for in every indenture. Where two partners agreed to teach an apprentice his trade and one of them retired from the business, it was held that there was a breach of the agreement (*a*). It is a breach of a contract of apprenticeship for a master who has covenanted to teach three trades to cease to carry on one of them ; and the apprentice may refuse to continue serving (*b*). In Scotland it has been held that if a master did not teach the apprentice his whole trade and mystery—for example, if a stonemason taught his apprentice only to hew stones—the contract might be annulled (*c*).

It is an answer to an action by the father on the covenants of an indenture for not teaching that the apprentice absented himself, and thereby became incapacitated from serving as an apprentice (*d*).

(*a*) *Couchman* v. *Sillar* (1870), 22 L. T. N. S. 480 ; 18 W. R. 757.

(*b*) *Ellen* v. *Topp* (1851), 6 Ex. 424 ; *Batty* v. *Monks* (1864), 12 L. T. N. S. 832.

(*c*) *James* v. *Carswells*, 7th July (1794) ; Campbell's edition of Fraser's Master and Servant, p. 360, where reference is made to a curious case, *Gardner* v. *Smith*, in which an apprentice pleaded that his master had given up, in a great measure, his business as a joiner, and become a smuggler, and that he seldom attended the shop, and took no care to instruct the apprentice. The relevancy of this defence was not denied, but the Court thought it "not proved that the apprentice was deprived of daily instruction by reason of the casual absence of the master."

(*d*) *Hughes* v. *Humphreys* (1827), 6 B. & C. 680 ; 9 D. & R. 715 ; *Raymond* v. *Minton* (1866), L. R. 1 Ex. 244 ; *Westwick* v. *Theodor* (1875), L. R. 10 Q. B. 224.

Where the teaching should be given, is either a question of construction or of what is reasonable in the circumstances. In *Royce* v. *Charlton* (*e*), the apprentice, son of Ann Charlton of Mansfield, in the county of Nottingham, put himself apprentice to defendant "of Mansfield in the said county of Nottingham," and the mother agreed to provide food, clothing, &c. The Court refused to imply an obligation to give instruction at Mansfield, the place where the master carried on business, and the parties to the indenture resided, at the time of its execution. This decision, however, was overruled, so far at least as out-door apprentices are concerned, by the Court of Appeal in *Eaton* v. *Western* (*f*), which was an action for refusing to continue the plaintiff as apprentice against the defendants, who had removed their business to Derby from Lambeth, where it was carried on when the indenture was entered into. The defendants had required all their apprentices to go to Derby, and had offered to pay their railway fares and increase their wages. Drawing a distinction between an indoor apprentice, whom a master is bound to provide with food and board, and an outdoor apprentice, maintained by his father, the Court of Appeal thought the defendants' command to remove to Derby unlawful and unreasonable.

If a master of an apprentice dies before the term for which he agreed to instruct him is ended the apprentice will not be able to recover the whole or any part of the premium on the ground of failure of consideration (*g*).

(*e*) (1881), L. R. 8 Q. B. D. 1.

(*f*) W. N. July 15, p. 112; *Solicitors' Journal*, July 8, 1882, p. 562.

(*g*) *Whincup* v. *Hughes* (1871), L. R. 6 C. P. 78; 40 L. J. C. P. 104; 24 L. T. N. S. 76; 19 W. R. 439; *Webb* v. *England* (1860), 29 Beav. 44; 7 Jur. N. S. 153; 30 L. J. Ch. 222; 9 W. R. 183; 3 L. T. N. S. 574. See, however, *Derby* v. *Humber* (1867), L. R. 2 C. P. 247, and s. 6, sub-s. 2, of Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90).

CHAPTER XVIII.

MASTER'S DUTY IN REGARD TO SERVANT'S CHARACTER.

A MASTER is not obliged to give his servant a character. Should a master, in giving a servant a character, state that which would be *primâ facie* libellous or slanderous, no action, in the absence of malice, will lie.

It matters not how much the servant is entitled to a character in fairness, and how cruel the refusal may be; it has not been disputed since the ruling of Lord Kenyon in 1800 in *Carrol* v. *Bird* (*a*) that a servant cannot sue his master because the latter does not give him a character.

The above immunity does not arise out of any peculiarity in the relation of master and servant (*b*). It is one of a large class of exceptions instituted in the interests of society. It is a particular application of a general principle, viz., that a communication made *bonâ fide* upon any subject matter in which the party communicating has an interest, or in reference to which he has, or honestly believes that he has a duty, is privileged if made to a person having a corresponding

(*a*) 3 Esp., 201. See also *Handley* v. *Moffatt* (1872), 7 Ir. R. C. L. 104. (The 2 Geo. 1. c. 17, s. 4, requires a master to give a certificate of discharge, and, in case of refusal, the servant may apply to a justice: held that the statutory remedy was exclusive, and that no action for refusing certificate lay against the master.)

(*b*) Erle, J., in *Coxhead* v. *Richards*, (1846), 15 L. J. C. P. 278; 10 Jur. 984; 2 C. B. 569. The origin of the exemption may, however, have something to do with the testimonials required by the 5 Eliz. c. 4, s. 10, to be given to servants.

interest or duty (*c*). The master's privilege is but an application of the general rule which shielded a person who wrote a letter to his mother-in-law containing defamatory statements respecting a person whom she was about to marry (*d*); a person who, *bonâ fide* believing that the plaintiff had stolen a box from the shop of the defendant's master, went to his master and said, "There was no one else in the room, and he must have taken it (*e*);" one who inserted a libel of the plaintiff in a correspondence with plaintiff's friend which was begun with the plaintiff's concurrence in order to investigate certain charges against him (*g*); directors who in a report to their shareholders stated with respect to their manager that there was a deficiency of stock for which he was responsible and that his accounts had been badly kept and had been rendered to them very irregularly (*h*). This privilege has been extended on the ground of public policy to communications as to servants by their former employers. The best justification which can be offered for it is the interest which employers, who are responsible for the acts of their servants, have in obtaining information as to the antecedents and characters of those whom they take into their service (*i*). But for this protection no one who had much regard to his safety would think of giving an unfavourable character.

Communications with respect to a servant's character will be presumed to be *bonâ fide*, and a master will not be, in general, required to prove or substantiate the truth of such statements (*k*). In order to support an action against a master

(*c*) See Parke, B., in *Toogood* v. *Spyring* (1834), 1 C. M. & R. at p. 193; 3 L. J. Ex. at p. 351, a dictum quoted with approval in many subsequent cases, including *Whitely* v. *Adams* (1863), 15 C. B. N. S. 392; *Harrison* v. *Bush* (1855), 5 E. & B. 344; *Spill* v. *Maule* (1869), L. R. 4 Ex. 232.

(*d*) *Todd* v. *Hawkins* (1837), 2 M. & Rob. 20; 8 C. & P. 88. (Letter from a person to his mother-in-law charging the person whom she was about to marry with grave misconduct: letter voluntary.)

(*e*) *Amann* v. *Damm* (1860), 8 C. B. N. S. 597; 7 Jur. N. S. 47; 29 L. J. C. P. 313; 8 W. R. 470.

(*g*) *Hopwood* v. *Thorn* (1849), 8 C. B. 293; 19 L. J. C. P. 94.

(*h*) *Lawless* v. *Anglo-Egyptian Cotton Co.* (1869), L. R. 4 Q. B. 262; 38 L. J. Q. B. 129; 17 W. R. 498; 10 B. & S. 226.

(*i*) See Wightman, J., in *Gardner* v. *Slade* (1849), 13 Q. B. 796; 18 L. J. Q. B. 334; 13 Jur. 826.

(*k*) Alvanley, C.J., in *Rogers* v.

who has published matter *primâ facie* libellous respecting a servant, malice in fact, that is, some wrongful act done intentionally, without just cause or excuse (*l*), must be proved; and the question will not be allowed to go to the jury unless there be evidence of malice (*m*). Its existence will not necessarily be shown by the fact that the statements complained of are not true. Malice may be proved in so many ways that only instances can be given; for example, proof that the communications were false to the knowledge of the person making them (*n*); the heinous or intemperate character of the libel itself (*o*); the fact that statements were made unsolicited and officiously (*p*)—though that is not always conclusive—or

Clifton (1803), 3 B. & P. 587; Denman, C.J., in *Fountain* v. *Boodle* (1842), 3 Q. B. 5. A letter written in answer to inquiries about a servant is not privileged in the sense that it is protected from discovery, without the person who refuses to produce it pledging his oath that it will tend to criminate him: *Webb* v. *East* (1880), L. R. 5 Ex. D. 108.

(*l*) Bayley, J.'s, definition of malice in *Bromage* v. *Prosser* (1825), 4 B. & C. at p. 255.

(*m*) There "must be something that is consistent only with a desire to injure the plaintiff, to justify a judge in leaving the question of malice to the jury." Jervis, C.J., in *Harris* v. *Thompson*, see note (*n*), citing *Somerville* v. *Hawkins* (1851), 10 C. B. 583; 20 L. J. C. P. 131; 15 Jur. 450. *Kelly* v. *Partington* (1833), 2 N. & M. 460, is sometimes quoted as an authority for the statement that "Slight evidence is sufficient in these cases to warrant the jury in finding malice." It is submitted that the same rule as to leaving questions to the jury applies to these as to other cases.

(*n*) *Fountain* v. *Boodle* (1842), 3 Q. B. 5. (Plaintiff employed as a governess for upwards of a year, during which time she was twice recommended to other situations by defendant; dismissed abruptly, without cause assigned; lost another situation, in consequence of the defendant writing in answer to inquiry, "I parted with her on account of her incompetency, and not being ladylike nor good-tempered." A postscript was added, "May I trouble you to tell her that this is the third time I have been referred to? I beg to decline any more applications." The Judge directed the jury that the occasion was privileged; but some proof of illwill having been adduced, and there being no evidence to the contrary, he held that there was a question for the jury.) *Harris* v. *Thompson* (1853), 13 C. B. 333. (Defendant, director of two companies, &c.; plaintiff, an official in both; plaintiff dismissed from an office for misconduct; defendant communicated the fact to the directors of the company; and, in reply to the inquiries, stated that one of the reasons was, obtaining money by false pretences: privileged communication.)

(*o*) *Rogers* v. *Clifton* (1803), 3 B. & P. 587. (Defendant quarrelled with plaintiff, his butler; called on his former master to inform him that plaintiff had behaved in an impertinent manner, and to desire him not to give him another character; being applied to by H., who wrote to him for a character, repeated the charges in a letter in strong terms: left to the jury to say, looking to all the circumstances, whether there was malice.)

(*p*) *Pattison* v. *Jones* (1828), 8 B.

that they were uttered needlessly in the presence of third parties (*q*), may substantiate the existence of malice, that is, a design to injure the servant. No enumeration of the circumstances which may prove this, and constitute extrinsic or intrinsic evidence of malice, is possible; the question of malice or *bona fides*, of proper or improper feeling, being peculiarly one for a jury. It is their business to say whether a master has made a letter about a servant a pretext for expressing private spite or conveying an ill-natured and unjust insinuation, or has described faults in an exaggerated fashion, indicating a wish to harm the servant.

In modern times the courts have been disposed to give a liberal application to the rule stated above, and they have not confined privilege to cases in which communications are made to a person about to engage a servant. This is illustrated by *Weatherston* v. *Hawkins* (*r*). The defendant, in answer to an application made to him by R., to whom the plaintiff was recommended, gave the plaintiff a bad character. The brother-in-law of the plaintiff having repeatedly called on the defendant with reference to the subject, the defendant sent him a letter containing specific charges of fraud; it was held that this was a privileged communication as being incidental to the application for a character. This species of privilege, it is said, extends even to the communication of facts which were unknown to a master while a servant was in his employment; "the privilege lasts as long as anything is discovered before unknown to the master." It will cover communications respecting the conduct of a servant after he

& C. 578; 3 M. & R. 101. (Master wrote first letter about a servant's misconduct, without having been applied to, and wrote a second in answer to inquiries: held that there was evidence of malice.) Bayley, J., pointed out that there might be occasions on which communications, though unsolicited, would be privileged. See also Coltman, J., in *Coxhead* v. *Richards* (1846), 2 C. B. p. 601. Lord Mansfield's ruling in *Lowry* v. *Aikenhead*, Folkard's Starkie, p. 253, must be taken with reservation.

(*q*) *Taylor* v. *Hawkins* (1851), 16 Q. B. 308; 20 L. J. Q. B. 313; 15 Jur. 746; *Manby* v. *Witt* (1856), 18 C. B. 544; 25 L. J. C. P. 294; 2 Jur. N. S. 1004; *Toogood* v. *Spyring* (1834), 1 C. M. & R. 181; 3 L. J. Ex. 347.

(*r*) (1786), 1 T. R. 110.

has quitted a master's employment. When a master wrote in answer to inquiries "nothing can be in justice said in her favour," and that "she (defendant) has, since her dismissal, been credibly informed she (plaintiff) has been and now is a prostitute at Bury," it was held, in the absence of any evidence of the falsehood of the statement, that the letter was privileged (*s*).

A mutual insurance society for shipping may, in order to protect its interests, communicate to the owner of a vessel that if he gives the command to a certain person whom they believe guilty of drunkenness, they will decline to continue to insure the vessel. If made in good faith and without malice towards the plaintiff, such a communication will be privileged (*t*).

The exact limits of the qualified privilege described in *Toogood* v. *Spyring* (*u*) are hard to define. Such expressions as "public and private duty," "matters where his interest is concerned," "the discharge of some duty, public, private or official, which the ordinary exigencies of society, his own private interest, or even that of another called upon him to perform," (*x*) are ambiguous. It cannot be said that they are yet clearly explained by the decisions. This much, however, is certain—by duties are not to be understood merely legal duties; they include moral and social duties of imperfect obligation; the duties, for example, which neighbours owe to each

(*s*) *Child* v. *Affleck* (1829), 9 B. & C. 403; 4 M. & R. 338; *Gardner* v. *Slade* (1849), 13 Q. B. 796; 18 L. J. Q. B. 334; 13 Jur. 826. *Dixon* v. *Parsons* (1858), 1 F. & F. 24. (Letter to a person who has given a good character to a servant which had procured a situation with defendant, saying that the servant does not deserve the character given; privileged.) *Somerville* v. *Hawkins* (1851), 10 C. B. 583; 20 L. J. C. P. 131; 15 Jur. 450. (Warning by master to servants not to associate with a dismissed servant, and statement of cause of dismissal; privileged.)

(*t*) *Hamon* v. *Falle* (1879), L. R. 4 Ap. C. 247.

(*u*) See note (*q*).

(*x*) Folkard's edition of Starkie on Slander, 250. See further as to privilege in communications respecting servants; *Johnson* v. *Evans* (1800), 3 Esp. 32; *Cockayne* v. *Hodgkinson* (1833), 5 C. & P. 543; *Rumsey* v. *Webb* (1841), C. & M. 104; *Coxhead* v. *Richards* (1846), 2 C. & B. 569; *Gilpin* v. *Fowler* (1854), 9 Ex. 615; *Fryer* v. *Kinnersley* (1863), 33 L. J. C. P. 96; 15 C. B. N. S. 422; *Cowles* v. *Potts* (1865), 34 L. J. Q. B. 248.

other, and which solicitors owe in vindication of the character of their clients (*y*). An action will lie against a person who makes a false and fraudulent statement with respect to the character of a servant (*z*).

The uttering of a forged character or testimonial is an offence at common law. Thus when a person had forged and uttered a document purporting to be a testimonial by a clergyman, and recommending him for the situation of a schoolmaster, he was properly convicted of a misdemeanour at common law (*a*).

(*y*) *Harrison* v. *Bush* (1855), 5 E. & B. 344.

(*z*) *Wilkin* v. *Reid* (1854), 15 C. B. 192; *Foster* v. *Charles* (1830), 6 Bing. 396.

(*a*) *R.* v. *Sharman* (1854), Dears. 285. See 32 Geo. III. c. 56, and Part II., Chapter III.

CHAPTER XIX.

MEASURE OF DAMAGES.

A SERVANT who is discharged improperly or without due notice is entitled to recover such damages as a jury thinks compensation for the actual loss which he has sustained.

Sometimes the master and servant agree as to the terms on which they shall be at liberty to terminate the contract. If it be agreed that they may determine the engagement on a month's notice, the servant can recover only a month's wages in the event of his being improperly discharged (*a*). A servant who is dismissed is bound to make reasonable exertion and show diligence in endeavouring to procure employment. It is deemed contrary to public policy that he should remain idle. He must seek for employment and accept it if it be offered. The true measure of damages is therefore not the amount of wages which he was promised under the agreement, but his probable loss. This will be his wages less the value of any place which he has obtained, or might have got by reasonable exertions. Mr. Justice Willes, in *Hartland* v. *The General Exchange Bank* (*b*), told the jury that in estimating the damages due to the plaintiff—the manager of a banking company—who had been engaged for a term of three years, and who had been dismissed at the end of four months,

(*a*) *Hartley* v. *Harman* (1840), 11 A. & E. 798; see *Gordon* v. *Potter* (1859), 1 F. & F. 644.

(*b*) (1866), 14 L. T. N. S. 863; see also statement of law by Blackburn, J., in *Sowdon* v. *Mills* (1861), 30 L. J. Q. B. 176; *Emmens* v. *Elderton* (1853), 13 C. B. 508; *Speck* v. *Phillips* (1839), 5 M. & W. 283.

they should take his salary into account; that they were not to give him the whole of his salary for the three years; but that they were to take into account the probability of his obtaining other employment. The rule was thus expressed by Erle, J., in *Beckham* v. *Drake* (*c*): "The measure of damages for the breach of promise now in question is obtained by considering what is the usual rate of wages for the employment here contracted for, and what time would be lost before a similar employment could be obtained. The law considers that employment in any ordinary branch of industry can be obtained by a person competent for the place, and that the usual rate of wages for such employment can be proved, and that when a promise for continuing employment is broken by the master, it is the duty of the servant to use diligence to find other employment."

The damages awarded must not be too remote. A seaman who had left his ship at Rio because he refused to take part in an illegal voyage, and who was committed to prison by the Brazilian Government as a deserter, was held entitled to recover loss of wages under his contract. But a claim for a loss of clothes, which had been carried away in the ship, was disallowed (*d*). In another case the facts were these: The plaintiff was engaged as manager of a mining company in South America for three years. The directors were at liberty to dissolve the agreement at any time on giving him twelve months' notice, or in lieu of such notice paying him twelve months' salary and his reasonable expenses in returning to England. If he served three years he was to be entitled to the expenses of the return of himself and his family. He was dismissed without notice or receiving a year's salary. The jury gave him a

(*c*) (1849) 2 H. of L. at p. 606; *Smith* v. *Thompson* (1849), 8 C. B. 44; (clerk hired for two years; wrongfully dismissed after about one quarter's service; jury awarded one year's salary; Court refused to disturb the verdict); *Goodman* v. *Pocock* (1850), 15 Q. B. 576; *Richardson* v. *Mellis* (1824), 2 Bing. 229.

(*d*) *Burton* v. *Pinkerton* (1867), 2 L. R. Ex. 340; 36 L. J. Ex. 137; 17 L. T. N. S. 15. *Ross* v. *Pender*, Jan. 1874, 1 R. 352 (loss of gratuities not to be considered in estimating damages).

year's salary from the date of dismissal and his own expenses in returning to England. The Court refused to add to the damages the expenses incurred in the return of his family or the amount of his salary to the end of the third year (*e*).

Though it is the duty of a servant who is discharged to seek employment, it appears that the *onus* rests with the person who denies his right to receive his wages in full to show that he could have obtained employment (*f*).

When it is said that a servant should diligently look for employment, it is not meant that a clerk should be ready to become a ploughman or a navvy, or that a farm bailiff should be ready to undertake the work of a ploughman. This is illustrated by a Scotch case, *Ross* v. *Pender* (*g*). The plaintiff, who had been employed as head gamekeeper, was dismissed, but he was offered the same wages and the post of assistant gamekeeper. The Court held that he was not bound to accept the subordinate situation. "I think," said the Lord President, "it is sufficient for the disposal of the defence to show how the employment offered him if he would return was wholly different from his former one as head keeper."

A servant who is improperly dismissed, or whom the master refuses to take into his service, may at once sue for damages. He may also in the former case recover the value of services actually performed.

In other words, the servant may treat the contract as at an end and rescinded, and sue on a *quantum meruit* for his

(*e*) *French* v. *Brookes* (1830), 6 Bing. 354 ; 4 M. & P. 11 ; *Noble* v. *Ames Manufacturing Co.*, 112 Mass. 492. (Plaintiff, who had come from the Sandwich Islands to Massachussetts, could not recover in an action for refusal to receive him into service, damages for loss of time or expenses in journey.)

(*f*) *Costigan* v. *Mohawk Rail Road Co.*, 2 Denio, 609.

(*g*) (1874) 1 R. 352. See as to prospective remuneration in winding up of companies. *Yelland's Case* (1876), L. R. 4 Eq. 350 ; *Clark's Case* (1869), L. R. 7 Eq. 550 ; 38 L. J. Ch. 562 ; 20 L. T. N. S. 774 ; *Ex parte Maclure* (1870), L. R. 5 Ch. 737 ; 39 L. J. Ch. 685 ; 23 L. T. N. S. 685 ; *Ex parte Logan* (1870), L. R. 9 Eq. 149 ; *Dean and Gilbert's Case* (1872), 41 L. J. Ch. 476 ; 26 L. T. N. S. 467 ; *Shirreff's Case* (1872), L. R. 14 Eq. 417 ; 42 L. J. Ch. 5 ; 20 W. R. 966.

services, or he may treat the contract as still in existence and sue on a breach of it. In the notes to *Cutter* v. *Powell* (*h*) another remedy is stated; "the servant," it is said, "may wait for the termination of the period for which he was hired, and may then sue for his whole wages, in *indebitatus assumpsit*, relying on the doctrine of constructive service." This phrase is borrowed from decisions in settlement cases, and the doctrine was first suggested by Lord Ellenborough in the case of *Gandell* v. *Pontigny* (*i*), an action for wages for the whole quarter by a servant wrongfully discharged before the end of the quarter. Lord Ellenborough suggested that the plaintiff might be entitled to recover on the ground that as he was "willing to serve for residue in contemplation of law, he may be considered to have served the whole." This was followed in *Smith* v. *Kingsford* (*k*) and *Collins* v. *Price* (*l*). But since the case of *Archard* v. *Hornor* (*m*), decided in 1828, by Lord Tenterden, this doctrine has been questioned. In *Smith* v. *Hayward* (*n*) the Court of Queen's Bench declared their preference for the law as laid down in *Archard* v. *Hornor*, and the same view was expressed in *Fewings* v. *Tisdal* (*o*). No doubt a servant who has been improperly dismissed is not bound to sue at once; he may sue at the end of the term; but the sum which he will recover will be calculated not on the basis of fictitious service, but the actual damages which he has sustained. Now that it is sufficient for a plaintiff to state in his statement of claim the facts upon which he relies, these decisions are unimportant (*p*).

A servant who has been improperly dismissed need not

(*h*) Smith's L. C. vol. ii. p. 38, 5th ed.

(*i*) (1816) 4 Camp. 375.

(*k*) (1836) 3 Scott, 279. *McKean* v. *Cowley* (1863), 7 L. T. N. S. 828. (Plaintiff engaged as commission agent, at salary of £50 a year; engagement to be terminated at end of any year on giving three months' notice; not entitled to receive the whole year's salary; "entitled to so much as would compensate him for the loss of the opportunity of earning £50.")

(*l*) (1828) 5 Bing. 132.

(*m*) (1828) 3 C. & P. 349.

(*n*) (1837) 7 A. & E. 544.

(*o*) (1847) 1 Ex. 295.

(*p*) See *Barnsley* v. *Taylor* (1867) 32 J. P. 229, as to effect of obtaining damages for improper dismissal.

wait until the expiration of the term for which he engaged to serve before bringing his action. So also if his master has refused without proper reason to receive him into his service, he may at once institute an action. This was decided in *Hochster* v. *De La Tour* (*q*), the facts of which were as follows: A courier was engaged in April of 1852 to go on a tour of three months, which were to commence on the first of June, 1852. On the 11th of May of that year the defendant wrote to say that he had changed his mind, and that he did not require the courier's services. He refused to make compensation. The courier began an action on the 22nd of May, 1852. The declaration averred that from the time of making the agreement until the time when the defendant refused to perform his promise and exonerated the plaintiff from performance, the plaintiff was ready and willing to perform the agreement. Breach that the defendant before the said 1st of June wrongfully refused to engage the plaintiff or perform his promise, and then wrongfully exonerated the plaintiff from the performance of the agreement, to the damage of the plaintiff. The plaintiff between the commencement of the action and the 1st of June obtained another engagement on equally good terms, but not beginning until the 4th of July. On a motion in arrest of judgment, Lord Campbell said, "The man who wrongfully renounces a contract into which he has deliberately entered cannot justly complain if he is immediately sued for a compensation in damages by the man whom he has injured; and it seems reasonable to allow an option to the injured party, either to sue immediately, or to wait till the time when the act was to be done, still holding it as prospectively binding for the exercise of this option, which may be advantageous to the innocent party, and cannot be prejudicial to the wrong-doer. An argument against the action before the 1st of June is urged from the difficulty of calculating the damages; but this argument is equally strong against an

(*q*) (1853) 2 E. & B. 678; *Danube Ry. Co.* v. *Xenos* (1861), 11 C. B. N. S. 152; (1863) 13 C. B. N. S. 825.

action before the 1st of September, when the three months would expire. In either case, the jury in assessing the damages would be justified in looking to all that had happened, or was likely to happen, to increase or mitigate the loss of the plaintiff down to the day of trial (*r*)."

(*r*) In spite of a common opinion to the contrary, it does not appear to be the case that, in the absence of any stipulation on the subject, a servant is entitled to expenses incurred in going to his master's house before being engaged, or returning from it after being dismissed, Burn's Justice, 5th ed., 225, and also *Read* v. *Dunsmore* (1840), 9 C. & P. 588.

CHAPTER XX.

SPECIFIC PERFORMANCE.

A CONTRACT of hiring and service will not be specifically enforced. A master or servant claiming redress for the breach of such a contract will be left to sue for damages.

In contracts of hiring and service the parties bargain for the personal qualities of each other. One servant is not as suitable as another, any more than one piece of land is as good as another; and at first blush it might seem that the reasons which have induced Courts of Equity to decree specific performance of contracts relating to land would equally apply to contracts relating to services. In point of fact, Courts of Equity did at one time act upon this view, and the books contain more than one instance in which masters were ordered to retain in their service persons whom they had improperly dismissed (*a*). This is, however, no longer done; Courts refuse to interfere in order to prevent a master discharging a servant; if improperly dismissed, the latter must seek his remedy in an action for breach of contract. It is thought inadvisable to force upon a master a servant whom he does not like, and with whom he must be brought into close proximity. "We are asked," said Lord Justice Knight Bruce in *Johnson* v. *Shrewsbury & Birmingham Rail. Co.* (*b*) —which was a case in which the plaintiffs had contracted for

(*a*) *Ball* v. *Coggs* (1710), 1 Bro. Par. C. 140; *East India Co.* v. *Vincent* (1740), 2 Atk. 82. See Campbell's edition of Fraser, Master and ervant, 102.

(*b*) See note (*c*), and Selborne, L.C., in *Wolverhampton and W. Ry. Co.* v. *London and N. W. Ry. Co.*, L. R. 16 Eq. 439; 43 L. J. C. 133.

a specific sum to work the defendants' line and to keep the rolling stock in repair—"to compel one person to employ against his will another as his confidential servant for duties with respect to the due performance of which the utmost confidence is required. Let him be one of the best and most competent persons that ever lived, still if the two do not agree, and good persons do not always agree, enormous mischief may be done." Another reason against interfering, mentioned in the above case, is that there could be no "mutuality." A Court could compel a master to retain in his employment a certain servant: it could not compel the latter to perform faithfully his part of the contract, and to work diligently and skilfully (*c*). The difficulty of securing real performance of such a contract is too great. Hence, if the substance of an agreement be an agreement for personal service, even though it be connected with other matters, the Court will not decree specific performance (*d*).

(*c*) *Pickering* v. *Bishop of Ely* (1843), 2 Y. & C. C. C. 249. (A bill praying that the plaintiff might be quieted in the office of receiver-general to the defendant, and that the defendant might be restrained from preventing the plaintiff exercising the duties of the office, dismissed.) *Stocker* v. *Brockelbank* (1851), 3 Mac. & G. 250; 20 L. J. Ch. 401. (Plaintiff, manager of the business of the defendants, dismissed by them for negligence; reversing an order by Lord Cranworth, V.C., Lord Chancellor Truro refused to restrain the defendants from excluding plaintiff from the exercise of his duties as manager.) *Johnson* v. *Shrewsbury & Birmingham Ry. Co.* (1853), 3 De G. M. & G. 914; 22 L. J. Ch. 921. (Agreement that plaintiffs should run and work all the trains of the company, and provide foreman, mechanics, &c.; Lord Justices Knight Bruce and Turner refused to restrain the defendants from discharging plaintiffs.) *Webb* v. *England* (1860), 29 Beav. 44; 30 L. J. Ch. 222. (Apprentice dismissed by master; Master of the Rolls refused to cancel articles of apprenticeship, or to order a return of a portion of the premium.) *Chaplin* v. *London & North-Western Ry. Co.* (1862), 5 L. T. N. S. 601. (Agreement by which the plaintiffs should collect, and deliver goods at certain stations of the defendants; Wood, V.C., refused to restrain the defendants from terminating the arrangement.) *Ogden* v. *Fossick* (1863), 32 L. J. Ch. 73. (The Lord Justices refused to enforce an agreement whereby the defendant agreed to grant the plaintiff a lease of a certain wharf, and plaintiff agreed to employ defendant as manager of the wharf.) *Peto* v. *Brighton, Uckfield, &c., Ry. Co.* (1863), 32 L. J. Ch. 677. *Gillis* v. *McGhee* (1863), 13 Ir. Ch. 48. (Plaintiff engaged to take management of baths; no specific performance). *Mair* v. *Himalaya Tea Company* (1865), L. R. 1 Eq. 411.

(*d*) *Ogden* v. *Fossick*, see n. (*c*). *White* v. *Boby* (1877), 37 L. T. N. S. 652; 26 W. R. 133. See remarks of Jessel, M.R., in *Rigby* v. *Connol* (1880), L. R. 14 Ch. D. at p. 487.

What Courts have refused to do directly, they may by injunction effect indirectly. If a contract of service contains a positive agreement to do something, and a negative agreement not to do another, or if such a negative agreement can be implied, they will restrain the breach of the negative agreement even though they are unable to enforce the affirmative. This is a comparatively new branch of Jurisprudence. For a time the Courts occasionally refused to interfere by injunction in aid of the negative part of an agreement when they could not enforce the positive part (*e*). Since the decision of Lord St. Leonards in *Lumley* v. *Wagner* (*f*), in 1852, they have acted differently. There the defendant, a singer, agreed to sing during a certain period at the plaintiff's theatre. She also engaged not to sing at any other theatre or any concert without the plaintiff's written authority. Lord St. Leonards held that, though unable to compel the defendant to perform her agreement, he could and ought to restrain her from singing elsewhere than at the plaintiff's theatre. It is apparently unnecessary that the contract should contain an express negative stipulation, if it be clear that the parties intended that the services should be exclusively given to one person (*g*).

Courts will also interfere to restrain by injunction persons

(*e*) *Kemble* v. *Kean* (1829), 6 Sim. 333; *Kimberley* v. *Jennings* (1836), 6 Sim. 340.

(*f*) 1 D. G. M. & G. 604; *Willis* v. *Childe* (1851), 13 Beav. 117 (injunction restraining trustees of a grammar school from removing master); and *Daugars* v. *Rivaz* (1860), 29 L. J. Ch. 685 (injunction restraining the elders and deacons of a French Protestant church from hindering the plaintiff, the pastor of the church, in the exercise of his duties), are cases in which the power of dismissal was in question. Many of the cases relate to actors who played at one theatre when under an engagement to play at another; *e. g. Montague* v. *Flockton* (1873), L. R. 16 Eq. 189; *Webster* v. *Dillon* (1857), 3 Jur. N. S. 432; 5 W. R. 867; *Fechter* v. *Montgomery* (1863), 33 Beav. 22. See also *De Mattos* v. *Gibson* (1859), 4 D. G. & J. 276, and *Brett* v. *East India & London Shipping Co.*, 2 H. & M. (1864), 404. (Agreement by which plaintiff was to be sole broker of defendants, and by which his name was to appear in all advertisements of company; the defendants had ceased to employ the plaintiff as broker; Court refused to compel the defendants to issue advertisements with the plaintiff's name as broker when they could not be compelled to employ him as such.)

(*g*) As to this, see remarks of Lord Blackburn in *Doherty* v. *Allman* (1878), L. R. 3 Ap. 730.

who have contracted not to practise professions or carry on trades or businesses within certain limits. The limitations must, however, as has been already stated, be reasonable, and the contract must not be in restraint of trade (*h*).

Under the Employers and Workmen Act, sec. 6, a Court of Summary Jurisdiction "may make an order directing the apprentice to perform his duties under the apprenticeship" (*i*).

(*h*) Chapter XII., and *Howard* v. *Woodward* (1865), 34 L. J. Ch. 46.

(*i*) 38 & 39 Vict. c. 90; as to seamen, see 43 & 44 Vict. c. 16, s. 10, Part II., Chapter XIV.

CHAPTER XXI.

LIEN.

A WORKMAN has a lien upon all materials which have been delivered to him to be mended, repaired, or improved, or made up, and upon which he has expended labour or money.

This refers to a special lien, and not to a general lien for a balance of account which is established by express contracts, or custom, and which is possessed by carriers, for example, or wharfingers (*a*).

A special lien is created when labour has been expended upon any object. A shipwright repairs a ship put into his possession; he has a lien for his remuneration (*b*). An article is delivered to a workman; he expends no labour upon it; he cannot set up a lien (*c*). It was for a time supposed that, if the price of a workman's services were fixed, no right of lien existed (*d*). But since the case of *Chase* v. *Westmore* (*e*), the contrary doctrine has been recognised. An

(*a*) As to proof of general lien, see *Rushforth* v. *Hadfield* (1806), 7 East, 224. As to lien of a purser for wages, see *Prince George* (1837), 3 Hag. 376. In the United States liens have been much extended beyond Common Law liens, by statutes. "The first attempt to create a mechanic's lien arose from a desire to improve as speedily as possible the city of Washington, as the seat of the permanent Government of the United States." Phillips on Mechanics' Liens, p. 11.

(*b*) *Franklin* v. *Hosier* (1821), 4 B. & Ald. 341.

(*c*) *Chapman* v. *Allen*, Croke, Car. I. 271 (no lien on cattle taken in to feed).

(*d*) Whitaker on Lien, p. 47.

(*e*) (1816), 5 M. & S. 180. (Wheat sent in different parcels at different times to be ground; the price fixed upon for grinding, 15*s.* a load; the miller had a lien for the whole.)

agreement to do work may be of such a character as to exclude a lien; but the mere circumstance that a particular price for work to be done is fixed is not conclusive (*f*). A lien may be excluded by the fact that credit is given (*g*).

The justification of this right is the fact that value has been imparted, or labour expended upon a certain article. It has been held that a livery-stable keeper has not a lien for the keep of a horse delivered to him in the way of his trade (*gg*), and that an agister of cattle has no lien in the absence of an express agreement (*h*). On the other hand, a trainer, it is said, has a lien on a horse delivered to him to train; the horse has received additional value (*i*). Obviously such a distinction is in many cases difficult to apply. What, for instance, is the position of an analytical chemist, who has assayed ore, or a jeweller who has at the request of a customer ascertained the specific gravity of a jewel? Is it to be said that he has no lien unless what he has done has made the ore or the precious stone more valuable than it was? There are expressions in the authorities which seem to show that no lien would exist unless that were so. But it seems probable that the Courts would favour the existence of a lien wherever labour and skill had been bestowed, and that it would be sufficient for a workman to prove that he had done that which he was engaged to do.

(*f*) *Hutton* v. *Bragg* (1816), 7 Taunt. 14, 25.

(*g*) *Raitt* v. *Mitchell* (1815), 4 Camp. 146.

(*gg*) *Judson* v. *Etheridge* (1833), 1 C. & M. 743.

(*h*) *Jackson* v. *Cummins* (1839), 5 M. & W. 342; 3 Jur. 436; see also *Steadman* v. *Hockley* (1846), 15 M. & W. 553; 10 Jur. 819; 15 L. J. Ex. 332. (A conveyancer has no lien on a deed "with and in respect of" which he has done business for the owner, unless he has expended labour on the deed.)

(*i*) *Jacobs* v. *Latour* (1828), 2 M. & P. 201; 5 Bing. 130; *Scarfe* v. *Morgan* (1838), 4 M. & W. 270; 1 H. & H. 292; 2 Jur. 569. (Mare sent to be covered by stallion belonging to the plaintiff; the plaintiff had a lien on the mare.)

A servant has no lien upon the property of his master which he has as a servant got into his possession.

This proposition is intended to give the effect of *R.* v. *Sankey* (*l*) and *Newington Board* v. *Eldridge* (*m*). In the former the town clerk of Ludlow claimed a lien on papers of the corporation on which he had worked as attorney or solicitor. His claim was sustained; but he had no right to retain muniments with respect to which he had done no work, and which he held as town clerk and as servant of the corporation.

In the latter case, a solicitor, who was clerk to a local board, sought to retain papers and books belonging to it. Bacon, V.C., ordered him to deliver them up. But the Court of Appeal, thinking that the question of lien involved the very question to be tried in the action, varied the order, and directed the papers to be delivered only upon payment of the sum claimed by the plaintiff into Court.

If a workman is supplied with the raw materials by his master, and works them up upon the premises of the latter, he has no lien; he never had possession (*n*). For the same reason when a servant gets into his hands as clerk, footman, butler, &c., any articles, he has no lien. The servant's possession is in these cases his master's, and no lien attaches in favour of the former.

Lien is a personal right (*o*) and cannot be transferred (*p*).

It is intended to protect a workman's right to remunera-

(*l*) (1836), 5 A. & E. 423.

(*m*) (1879), L. R. 12 Ch. D. 349.

(*n*) *Franklin* v. *Hosier* (1821), 4 B. & Ald 341.

(*o*) Buller, J., in *Daubigny* v. *Duval* (1794), 5 T. R. 604, and *Thames Iron Works Co.* v. *Patent Derrick Co.* (1860), 1 J. & H. 93; 29 L. J. Ch. 714; 6 Jur. N. S. 1013; Story on Bailments, s. 440.

(*p*) Selwyn's Nisi Prius, 13th ed., p. 1320. No lien will be acquired by wrongfully obtaining possession: *Lempriere* v. *Pasley* (1788), 2 T. R. 485. (Goods delivered to a person wrongfully claiming them; he may not detain them against owner until the latter repays freight, which the former has paid.)

tion, and the actual expenses of a bailee cannot be included (*q*).

A lien may be lost by giving up possession of a chattel. For reasons which are not altogether satisfactory, it has been laid down that a person loses a lien if he claims a right to detain a chattel upon any other ground than that of the existence of a lien, or if he claims more than is actually due (*r*). It is submitted, however, that this view is not correct. The question is one of intention. In the words of Parke, B. (*s*), it is incumbent to show that the person entitled to the lien has agreed to waive it, or has agreed to waive the necessity of the tender of the less sum due.

The right of lien cannot be greater than the right of the person at whose instance and request the labour was expended (*t*).

A seaman has a lien for his wages on the ship upon which he has served. It extends to the whole of the ship, and not merely as a ship, but to every plank (*u*). It affects even a *bonâ fide* purchaser of the vessel without notice; and it takes priority over all other liens upon the ship (*x*). If the value of the ship is insufficient to pay the wages, seamen may require the freight to be paid into the Admiralty Court to meet the deficiency. Any agreement by which a seaman agrees to forego this lien is void (*y*). By the 17 & 18 Vict., c. 104, s. 191, the master has the same lien in respect of his wages as ordinary seaman.

(*q*) *Somes* v. *British Empire Shipping Co.* (1860), 8 H. of L. 338.

(*r*) *Boardman* v. *Sill* (1809), 1 Camp. 410; *Knight* v. *Harrison* (1823), cited in *Scarfe* v. *Morgan* (1838), 4 M. & W. at p. 279.

(*s*) *Scarfe* v. *Morgan*, at p. 279.

(*t*) *Turner* v. *Letts* (1855), 20 Beav. 185.

(*u*) *Neptune* (1824), 1 Hagg. 238; *Madonna d'Idra* (1811), 1 Dod. 37.

(*x*) *The Sydney Cove* (1815), 2 Dod. 500; *The Batavia* (1822), 2 Dod. 500; *The Margaret* (1862), 3 Hag. 238.

(*y*) 17 & 18 Vict. c. 104, s. 182.

CHAPTER XXII.

DUTIES OF SERVANTS.

SERVANTS are bound to obey the lawful orders of their masters, and they may be dismissed without notice for wilful disobedience of such orders (*a*).

The obedience which is required is not limitless. A servant is not bound to obey unlawful orders. Neither is he obliged to risk his safety (*b*). Servants may not be dismissed if they refuse to perform services of a kind which they did not undertake to perform. A lady's maid cannot be expected to milk cows (*c*), or a farm labourer to act as a domestic servant (*d*). A seaman, who is engaged for one voyage, is not bound to serve for another voyage, the risks of which may be very different from those which he agreed to face. This is illustrated by *Burton* v. *Pinkerton* (*e*), which has

(*a*) As to the general principles stated in the text, see Lord Abinger in *Priestley* v. *Fowler* (1837), 3 M. & W. 1 ; *Turner* v. *Mason* (1845), 2 D. & L. 898 ; 14 M. & W. 112 ; 14 L. J. Ex. 311 ; *Callo* v. *Brouncker* (1831), 4 C. & P. 518.

(*b*) If a servant has been misled as to the dangers of his employment, he may throw up his engagement ; Cockburn, C. J., in *Woodley* v. *Metropolitan District Ry. Co.* (1877), L. R. 2 Ex. D. at p. 388, and Lord Abinger in *Priestley* v. *Fowler* (1837), 3 M. & W., at p. 6 ; *Limland* v. *Stephens* (1801), 3 Esp. 269. (If a master, by inhuman treatment, compels a sailor, for his safety, to quit the ship, this will not be desertion, and will not cause a forfeiture of wages. Accordingly it not desertion within 7 & 8 Vict. c. 112, s. 9, if a seaman quits a ship in consequence of the cruel treatment by the master ; *Edwards* v. *Trevellick* (1854), 4 E. & B. 59 ; or because the provisions are insufficient ; *The Castilia* (1822), 1 Hag. 59.

(*c*) Bell's Principles, 77.

(*d*) See Campbell's edition of Fraser's Master and Servant, 78, where it is said : "Nor is a person hired to manage a farm bound to officiate as a servant of all work ; nor can a gardener be forced to work in a turnip-field ; nor a grieve and overseer of a coalwork be compelled to assist at the windlass-wheel, and click the coals at the pit ; nor a head gamekeeper to act as under gamekeeper."

(*e*) L. R. 2 Ex. 340 ; *Ross* v.

been already mentioned. The plaintiff had engaged to serve for twelve months as a mariner from London to various ports in North and South America, and to obey all lawful commands. War was declared between Spain and Peru, and a proclamation enjoining neutrality was issued by the English Government. Acting under the orders of the Peruvian Government, the captain told the crew at Rio that the next destination was Callao. The plaintiff objected to serve further, on the ground that the voyage was illegal, and he left the ship. It was held that an action for breach of contract lay against the owners, inasmuch as the vessel was used for purposes which made the crew liable to more risks than were incident to an ordinary commercial voyage. The general rule, however, is, as Baron Parke stated in *Turner* v. *Mason* (*f*), that "the obligation of a domestic servant is to obey all lawful commands." It matters not how inconvenient to the servant, or how harsh or cruel the orders may be; they may be even unreasonable; provided they be lawful and within the scope of his employment, he must obey them on pain of dismissal. "The master is to be the judge," as Baron Parke observes in the same case, "of the circumstances under which the servant's services are required, subject to this, that he is to give only lawful commands." This principle was carried to an extreme length in *Turner* v. *Mason* (*f*). A housemaid having insisted, contrary to her master's orders, upon visiting her sick and dying mother, was dismissed; and the Court of Exchequer was of opinion that, even if the master had had

Pender, 1 R. 4th series, 352. Mr. Wood, in his Law of Master and Servant, pp. 175 and 183, contends that, in times of special or great emergency, a servant is not justified in refusing to work beyond the measure of a day's work as fixed by custom or contract. No authority is adduced for this view, and it does not seem capable of being supported, unless so far as is borne out by *R.* v. *St. John* (1829), 9 B. & C. 896.

(*f*) (1845), 14 M. & W. 112, 115; 2 D. & L. 898; 14 L. J. Ex. 311. See *Spain* v. *Arnott* (1817), 2 Sta. 256; *Callo* v. *Brouncker* (1831), 4 C. & P. 518; and two Scotch cases, similar to *Turner* v. *Mason*; *Hamilton* v. *McLean*, 9 Dec. 1824, 3 D. & S. 379, 268; *A.* v. *B.* (1853), 16 D. 269.

notice of the cause of her request to absent herself, which was not alleged, it would not have justified her in disobeying her master's order. "There is not," said Baron Parke, "any imperative obligation on a daughter to visit her mother under such circumstances, although it may be unkind and uncharitable not to permit her."

In some cases appears a qualification of the doctrine just stated (*g*). The correct rule in point of law, however, seems to be that expressed by Baron Parke in *Turner* v. *Mason*, that wilful disobedience to any lawful order is a good cause of dismissal. At the same time, it is probable that the Courts would enquire whether there had been substantial obedience, and whether the master had provoked the servant by subjecting him to annoyance. Dismissal for disobedience to lawful orders involves forfeiture of wages (*h*), and it would be a perversion of justice if a master, who had done his utmost to irritate a servant to whom wages were accruing, could take advantage of his own wrong and escape the obligation to pay anything by driving a servant to an act of disobedience. According to Lord Fraser (*i*), "Any angry word spoken under provocation, or a disrespectful expression or action apologised for, will not be held sufficient to sanction a dissolution of the contract.

(*g*) *Cussons* v. *Skinner* (1843), 11 M. & W. 161, where it was held to be necessary to prove disobedience, causing loss, turned on a point of pleading.

(*h*) *Spain* v. *Arnott* (1817), 2 Sta. 256.

(*i*) Law of Master and Servant, p. 405. In a case decided by Coleridge, C.J., and Manisty, J., Michaelmas Sittings, 1880, *Shield* v. *Legge*, the Court held that refusal to obey lawful order to fetch books did not warrant dismissal when a master, by his language and conduct, had provoked a quarrel, and the servant had, in fact, obeyed shortly after it was over. Misconduct on the part of the servant may not go to the whole consideration of the contract; *e.g.*, in *Gould* v. *Webb* (1855), 4 E. & B. 933 (action for wrongful discharge; defence that the engagement was that the plaintiff, European correspondent of a newspaper, should, by every steamer, forward to New York a letter containing European news, and that defendant wrongfully neglected so to forward; and also that defendant employed plaintiff upon condition that he might draw bills for the amount of his salary as it became due, but not for any sum not due; but plaintiff wrongfully drew on defendant; both pleas held bad on demurrer. The case may be said to turn on pleading.

Dictum aut factum per iram aut fervorem non est ratum, nisi quis in iisdem persistat" (*k*).

A servant is bound to be reasonably diligent and faithful in his service, and he may be dismissed for habitual neglect of his duties.

It is impossible to define the precise degree of fidelity which is required; it varies according to the nature of the employment. It is not every failure in faithful service, or every act of negligence which will warrant a master taking

(*k*) The following are some of the chief decisions relating to obedience :—

Good Ground for Dismissal.

Spain v. *Arnott* (1817), 2 Sta. 256. (Refusal by a farm servant to go with his team to a place a mile off till he had had dinner.) *Reid* v. *Dunsmore* (1840), 9 C. & P. 588. (A journeyman painter sent by his master to work at a gentleman's house, and ordered to keep the walks: circumstance of his being found in one of the preserves a good ground for dismissal. *Renno* v. *Bennett* (1842), 3 Q. B. 768. (Plaintiff, employed as a carpenter's mate on a South Sea voyage, to be paid, on the discharge and sale of the cargo, a proportion of the nett profits; when the captain died, and the mate, a foreigner, took command, plaintiff refused to work the ship except to an English port.) *Turner* v. *Mason*. See n. (*f*), p. 206. *Lilley* v. *Elwin* (1848), 11 Q. B. 742. (Plaintiff, a waggoner, refused to work during harvest until eight in the evening, because strong beer, of good quality, not supplied him according to an alleged custom, not established by evidence.) *Churchward* v. *Chambers* (1860), 2 F. & F. 229. (Messman of a regiment refused to send up dinner. The colonel having threatened to put him under arrest, he then served the dinner, which had been delayed half an hour: held that mess committee were entitled to dismiss him, though next day he apologised.)

Not Good Ground for Dismissal.

Callo v. *Brouncker* (1831), 4 C. & P. 518. (Defendant alleged that her servant, a courier, stopped at a particular hotel contrary to orders; appeared sulky when remonstrated with, and neglected to come several times when rung for. Park, J., in directing the jury, said that "There was a contract for a year, with an implied agreement that if there was any moral misconduct, either pecuniary or otherwise, wilful disobedience or habitual neglect, the defendant should be at liberty to part with the plaintiff"; but he added, "no such conduct had been proved." *Jacquot* v. *Bourra* (1839), 7 Dow. 348. (Action for wrongful discharge of plaintiff and his wife; plea that the plaintiff's wife obstinately refused to work for the defendant; but on demurrer plea held bad, because not showing a disobedience of reasonable commands. *Price* v. *Mouatt* (1861), 2 F. & F. 529; (1862), 11 C. B. N. S. 508. (Plaintiff, engaged as buyer; refused to obey an order to card lace, was dismissed: jury found that carding lace was not within the duties of buyer.)

the extreme step of dismissing his servant (*l*). It is the habit of neglecting a master's interests, which goes to the root of the contract, and warrants him in putting an end to it. In *Fillieul* v. *Armstrong* (*m*), which was an action for wrongful dismissal brought by a French master, the defendant pleaded that the plaintiff had absented himself for four days without the defendant's consent. It was not shown that the defendant had suffered any inconvenience in carrying on his school; and it was therefore held that he was not justified in dissolving the contract. If a servant were frequently to absent himself without leave and to sleep out at night, he might be dismissed without notice (*n*). Even absence for a day or a single hour might, in certain circumstances, show such wanton disregard of his employer's interests as to excuse dismissal. An actor who failed to be present at a first night, a printer who quitted his work shortly before a newspaper went to press, might no doubt be at once dismissed.

When a servant or workman receives materials to be dealt with in the course of his business, he is a bailee coming under the fifth of the six divisions described by Holt, C. J., in *Coggs* v. *Bernard* (*o*). His duty is "to use ordinary diligence in the care and preservation of the property entrusted to him." A watchmaker, for example, with whom a watch is left is bound to use ordinary care in keeping it (*p*). So, where the servant of a merchant was entrusted in the absence of his master with his goods, and caused them to be landed before the customs duties were paid, and the goods were consequently forfeited to the Queen, it was held that an action

(*l*) It is sometimes alleged that the command must be "reasonable," Gibbon, Contracts on Work, p. 143; Wood, p. 223. But unless "reasonable" means only lawful, and within the scope of the servant's duties, the qualification seems not justified. See *Jacquot* v. *Bourra*, *supra*. "It is not every failure in faithful service which will warrant a master in discharging his servant, and, if he does, he must discharge him on the occasion of this misconduct, and not at any time after, at the master's option;" Bramwell, B., in *Horton* v. *McMurtry* (1860), 5 H. & N. 667, 675; 29 L. J. Ex. 260.

(*m*) (1837) 7 A. & E. 557.

(*n*) *Robinson* v. *Hindman* (1800), 3 Esp. 235.

(*o*) (1703) Ld. Raym. 909; 1 Sm. L. C. 199 and 233.

(*p*) *Clarke* v. *Earnshaw* (1818), 1 Gow. 30.

on the case lay against the servant (*q*). "A watchmaker, having a watch left with him for repairs," says Story (*r*), "is obliged to use ordinary diligence in keeping it; and if he omits it, and the watch is lost, he is liable for the value in damages. So, a workman is bound, not only to guard the thing bailed against ordinary hazards, but also to exert himself to preserve it from any unexpected danger to which it may be exposed." The case generally cited in support of this doctrine is *Leck* v. *Maestaer* (*s*). The proprietor of a dry dock received a ship for the purpose of repairing it. The dock-gates were burst by an unusually high tide, and the ship was injured. Only one watchman was left to take care of the shipping. Lord Ellenborough ruled that it was the duty of the defendant to have had a sufficient number of men in the dock to take measures of precaution when the danger was approaching, and that he was answerable for the effects of the deficiency (*s*).

A servant is bound to consult the interests of his master, and may be dismissed for acts seriously injurious thereto (*t*).

This is a vague description of a class of cases resembling some of those already described. No very precise account of their nature can be given. All that can be done is to show by a few illustrations the manner in which Courts have acted with regard to this point. Disclosure of a master's trade or business secrets, disclosure of family secrets (*x*), disclosure of the accounts of a company to a person connected with another company (*y*), advising and assisting an apprentice to

(*q*) *Levison* v. *Kirk* (7 James I.), Lane, 65; *Hussy* v. *Pacy* (1667), 1 Lev. 188; *Walker* v. *The British Guarantee Association* (1852), 18 Q. B. 277.

(*r*) Bailment, sec. 429.

(*s*) (1807) 1 Camp. 138.

(*t*) *Arding* v. *Lomax* (1855), 24 L. J. Ex. 80.

(*x*) Best, C.J., in *Beeston* v. *Collyer* (1827), 2 C. & P. 607.

(*y*) *East Anglian Ry. Co.* v. *Lythgoe* (1851), 2 L. M. & P. 221; also *Mercer* v. *Whall* (1845), 5 Q. B. 447.

quit his master's service (*z*), entry by a clerk of a company on the margin of a minute-book of a protest against a resolution of the directors to call a meeting to appoint his successor (*a*), an acting manager at the Covent Garden Theatre ridiculing and finding fault with his master's arrangements and choice of plays so as to excite discontent among the actors (*b*), receiving money contrary to express orders (*c*), — in all these instances masters have been warranted in dismissing servants. Conduct on the part of a servant wholly inconsistent with his position as such, and showing an intention to assert another position than that which he properly has, would be good ground for discharging him. Thus, a claim to be a partner by a servant who at certain periods received a portion of the profits of a business, was held to excuse dismissal without notice (*d*). For the same reasons dismissal, in cases where a master has been robbed by a servant (*e*), or where the latter has been guilty of some act of dishonesty towards the master, would be warranted. Such would be the case even if the

(*z*) *Turner* v. *Robinson*, see note (*n*). See as to soliciting business, *Nichol* v. *Martyn* (1799), 2 Esp. 732.

(*a*) *Ridgway* v. *Hungerford Market Co.* (1835), 3 A. & E. 171.

(*b*) *Lacy* v. *Osbaldiston* (1837), 8 C. & P. 80.

(*c*) *Bray* v. *Chandler* (1856), 18 C. B. 718.

(*d*) *Amor* v. *Fearon* (1839), 9 A. & E. 548 ; 1 P. & D. 398 ; 2 W. W. & H. 81. *Smith* v. *Thompson* (1849), 8 C. B. 44. (A servant appropriated to payment of his own salary, which was due, £30, part of a sum remitted to him by his master for business purposes ; left to jury to say whether plaintiff guilty of wrongful appropriation.) *Horton* v. *McMurtry* (1860), 5 H. & N. 667 ; 29 L. J. Ex. 260. (Plaintiff, manager of defendant's factory, entered into a contract with C. for supply of bladders, which were necessary to defendant's business ; the bladders were consigned to G., who let plaintiff have as many as he wanted for defendant's business ; it did not appear that plaintiff charged defendant any more than he gave for them : good ground of discharge.) *Blenkarn* v. *Hodges' Distillery Co.* (1867), 16 L. T. N. S. 608. (Traveller of a distillery company bound to remit immediately all sums collected by him, sold some of the company's wines to brothel keeper, and neglected to remit sums immediately.) *Nichol* v. *Martyn* (1799), 2 Esp. 732. (A clerk or servant at liberty to solicit from his master's customers business to be given him after he quits his master's service ; not so in case of orders to be given him while in master's service.)

(*e*) Lord Ellenborough in *Trotman* v. *Dunn* (1815), 4 Camp. 211 ; *Cunningham* v. *Fonblanque* (1833), 6 C. & P. 44, 49 ; *Spotswood* v. *Barrow* (1850), 5 Ex. 110.

master sustained no loss (*f*). So, too, is desertion by a seaman—that is, abandoning a ship before the end of the time for which he is engaged without just cause and without the intention of returning. The question is always one of fact. Has the servant so conducted himself that it would be manifestly injurious to the interests of the master to retain him (*g*).

A servant (domestic) may be dismissed for gross acts of immorality.

Thus a female domestic servant who, while in the service of her master, is delivered of a bastard child, may be dismissed (*h*). So if a man servant debauches a female servant, both may be dismissed (*i*). A clerk who assaulted his master's maid servant with intent to ravish her, was held to be rightly dismissed (*k*). Habitual drunkenness, if it interfered with the due discharge of a servant's duties, would justify dismissal (*l*). The authorities are not clear as to the limitations, if any, with which the above principle must be taken. They lay it down as a general rule that gross immorality on the part of a servant will be a good reason for the master putting an end to the contract. But it is submitted that the immorality must have direct reference to

(*f*) *Brown* v. *Croft* (1828), 6 C. & P. 16 (n.).

(*g*) Vaughan, J., in *Lacy* v. *Osbaldiston*, 8 C. & P. 80.

(*h*) *R.* v. *Brampton* (1777), Cald. 11; *Connors* v. *Justice* (1862), 13 Ir. C. L. 451.

(*i*) *R.* v. *Welford* (1778), Cald. 57; but see *R.* v. *Westmeon* (1781), Cald. 129.

(*k*) *Atkin* v. *Acton* (1830), 4 C. & P. 208.

(*l*) *Speck* v. *Phillips* (1839), 5 M. & W. 279, 281; *Wise* v. *Wilson* (1845), 1 C. & K. 662; *McKellar* v. *Macfarlane* (1852), 15 D. 2nd Ser. 246; *Edwards* v. *Mackie* (1848), 11 D. 2nd Ser. 67; *New Phœnix* (1823), 1 Hagg. Ad. 198. There has been a considerable amount of discussion in the Scotch cases as to when intoxication is a ground for dismissal. Mr. Wood seems to indicate the true rule when he says: "In all such cases it is for the jury to say, in view of the position occupied by the servant and the particular circumstances, whether his discharge is reasonable. A minister who should become intoxicated on any occasion would, of course, be subject to instant dismissal, because inconsistent with his position; but a farm labourer or a clerk, when off from duty, upon a holiday, would not;" p. 212.

the services to be performed, so as to render them worthless or less valuable than was to be reasonably anticipated.

Acts of immorality on the part of a governess, a secretary, a menial servant, or other members of a household, during the time they were employed, would naturally warrant a master in discharging them; such conduct unfits them for their place.

But it is not to be supposed that a cotton manufacturer would be at liberty to discharge one of his hands without notice, or that a newspaper proprietor could dismiss a reporter because these servants had been guilty of immorality which had no relation to the duties which they were hired to perform (*m*). Even as regards servants who live in a master's house, and are brought into close relationship with his family, the misconduct which will justify dismissal must occur in the course of their service; they may not be dismissed for past misconduct. This is illustrated by *Fletcher* v. *Krell* (*n*). The plaintiff had engaged the defendant as governess for three years. In an action for breach of contract the defendant set up the plea that she had concealed the fact of her having been divorced from her husband. This was held a bad plea in the absence of any allegation of fraud.

A servant may be dismissed for gross insolence or rudeness to his master.

In most of the cases in which this point was considered, there was insubordination or disobedience. But gross insolence would also warrant dismissal. Each case must be considered by itself; the social rank and position of the parties and the habits and customary language of people in their

(*m*) "It would appear that improper conduct out of the master's household is not a ground of dismissal, unless, indeed, it can be shown to be prejudicial to the master, and hurtful to his feelings or reputation." Fraser, ii. p. 413. And see *Read* v. *Dunsmore*, 9 C. & P. at p. 594.

(*n*) (1873) 42 L. J. Q. B. 55; 28 L. T. N. S. 105. The plaintiff had described herself in the written agreement as "spinster." The case turned on a point of pleading. *R.* v. *Westmeon* (1781), Cald. 129; *Andrews* v. *Garstein* (1861), 31 L. J. C. P. 15.

condition of life must be considered. It is useless to try to give more precision to matter, which is peculiarly one of degree, than it admits of. When an action was brought by a musical critic against a newspaper proprietor for wrongful dismissal, and the latter pleaded that the former had been negligent and insolent, Hill, J., said "A single instance of insolence on the part of a gentleman employed in such a capacity would hardly justify dismissal" (*o*).

A servant is bound to possess reasonable skill in performing the duties which he undertakes, and gross incompetence will justify dismissal.

"The public profession of an art," said Mr. Justice Willes in *Harmer* v. *Cornelius* (*p*), "is a representation and undertaking to all the world that the professor possesses the requisite ability and skill." No express representation of fitness is necessary. A warranty of this is implied in the fact that a man holds himself out as a doctor, or an architect, or a painter, or a ploughman. No doubt this would not hold good if the employer had notice of the incompetence of his servant before engaging him, or if he chose to employ him in work for which he did not profess to be specially fitted (*q*). It is equally clear that there is no implied undertaking on the part of a servant to use the highest possible skill. The circumstance that some other workman would have done

(*o*) *Edwards* v. *Levy* (1860), 2 F. & F. 94; *Smith* v. *Allen* (1862), 3 F. & F. 157; *Handyside* v. *Arthur*, Campbell's edition of Fraser's Master and Servant, p. 71; *Selby* v. *Baldry*, (1867), 5 S. L. R. 64. As to master's right to turn out a servant who makes a noise and disturbs the peace of the family, *Shaw* v. *Chairitie* (1850), 3 C. & K. 21.

(*p*) (1858) 5 C. B. N. S. 236; 28 L. J. C. P. 85. (A scene-painter dismissed for incompetence.) *Slater* v. *Baker* (1767), 2 Wils. 359; *Scare* v. *Prentice* (1807), 8 East, 348; *Jenkins* v. *Beltham* (1855), 15 C. B. 168; *Scarle* v. *Ridley* (1873), 28 L. T. 411 (servant dismissed for incompetence without notice: held not entitled to wages); *Lee* v. *Walker* (1872), L. R. 7 C. P. 121; *Balmer* v. *Gilman* (1842), 4 M. & G. 108; Pothier, Louage, 419 to 433; Story on Bailments, s. 428.

(*q*) Willes, J., in *Harmer* v. *Cornelius* (1858), 28 L. J. Q. B. 85; *Shiells* v. *Blackburne* (1789), 1 H. B. 158.

better what was undertaken is no proof that there was a want of care or skill warranting dismissal, or an action for negligence, or a deduction in remuneration (*r*). The degree of diligence required will vary according to the delicacy and importance of the occupation (*s*).

A servant may be dismissed if from sickness or other cause he becomes for a considerable time or permanently unable to perform his duties. But if the servant be not dismissed, sickness will be no defence to an action for wages.

This principle, which is only a particular application of the former principle, was affirmed in *Cuckson* v. *Stones* (*t*). The plaintiff had agreed to serve the defendant as a brewer for ten years, at £2 10*s*. a week. The plaintiff was taken ill in Christmas of 1857, and was unable to attend to his work until July of 1858. He then tendered his services, and was again employed about the brewery. In an action for wages for the thirteen weeks during which he had been absent, it was admitted that the contract had not been rescinded. The defendant set up the defence that the plaintiff was not ready or willing and able to render the agreed service. The plaintiff demurred; and the Court gave judgment for the defendant on the demurrer. But on a motion to set aside

(*r*) Tindal, C.J., in *Lanphier* v. *Phipos* (1838), 8 C. & P. 475, 479; *Rich* v. *Pierpont* (1862), 3 F. & F. 35.

(*s*) Dig. 19, 2; 13, 5; Story on Bailments, s. 432; Pothier, Louage, c. II. s. 4, a. 1; see also Cockburn, C.J., Reasons for Dissent in regard to Alabama Award, Supplement to *London Gazette*, 1872, 4139; *Hinshaw* v. *Adam* (1870), 8 M. 933.

(*t*) (1858) 1 E. & E. 248; 28 L. J. Q. B. 25. Campbell, C.J., observes: "He (the servant) could not be considered incompetent by illness of a temporary nature." See Blackburn, J., in *Poussard* v. *Spiers*, (1876), L. R. 1 Q. B. D. 414. The law is thus stated by Mr. Bell in his Principles. Sickness, or inevitable accident, "will excuse non-performance for a short time; but if the inability should continue long, and a substitute should be required, the master will be discharged from his counter obligation to pay wages," sec. 177, 6th ed. Sickness or incapacity to serve on the part of an apprentice, however, apparently, does not discharge his master from the covenant to provide for and maintain him; he takes the apprentice for better or worse. Addison on Contracts, 696, *R.* v. *Hales Owen* (1717), 1 Str. 99.

the verdict obtained by the plaintiff, the Court refused to enter judgment for the defendant. "Looking to the nature of the contract sued upon in this action," said Campbell C.J., we think that want of ability to serve for a week would not of necessity be an answer to a claim for a week's wages, if in truth the plaintiff was ready and willing to serve had he been able to do so and was only prevented from serving during the week by the visitation of God, the contract to serve never having been determined." "If the plaintiff," added Lord Campbell, "from unskilfulness, had been wholly incompetent to brew, or, by the visitation of God, he had become, from paralysis or any other bodily illness, permanently incompetent to act in the capacity of brewer for the defendant, we think that the defendant might have determined the contract. . . . The contract being in force, we think that here there was no suspension of the weekly payments by reason of the plaintiff's illness and inability to work."

While permanent inability or incompetence owing to sickness would, as the above case shows, warrant dismissal, it would be a good defence in an action for non-performance of service. This was decided in *Boast* v. *Firth* (*u*), which was an action by a master for breach of an apprenticeship deed. The defendant, the father of the apprentice, pleaded that his son was prevented by the act of God, to wit, by permanent illness, happening and arising after the making of the indenture, from remaining with or serving the plaintiff. This was considered a good plea, it being in the contemplation of parties to all contracts for personal services that the parties to them should be in a position to perform them.

The right of a servant to wages during temporary sickness is not quite clear. Some writers have drawn a distinction between illness caused by the servant's own fault and that for which he is not to blame (*x*). But the authorities, on the

(*u*) (1868) L. R. 4 C. P. 1; *Taylor* v. *Caldwell* (1863), 3 B. & S. 826, 839; *Appleby* v. *Meyers* (1866 & 1867), L. R. 1 C. P. 615; L. R. 2 C. P. 651, reversing decision of Court of Common Pleas; 35 L. J. C. P. 295; 36 L. J. C. P. 331.

(*x*) See Campbell's edition of Fraser on Master and Servant, p. 140.

whole, show that if the contract of service remains in force a servant, even if ill, will be entitled to his wages. In *Cuckson* v. *Stones* the Court observed: "It is allowed that under this contract, there could be no deduction from the weekly sum in respect of his having been disabled by illness from working for one day of the week; and, while the contract remained in force, we see no difference between his being so disabled for a day, or a week, or a month" (*y*).

It is for the Court to say whether the facts alleged against a servant constitute a reason for dismissal; it is for the jury to say whether the alleged facts exist.

The practice as to this has been by no means uniform. In some instances the question has been left mainly to the jury. Thus in *Ridgway* v. *The Hungerford Market Company* (*z*), the jury were asked to decide whether entering a protest on the margin of a minute-book was a good ground for dismissal. In *Amor* v. *Fearon* (*a*), Denman, C.J., told the jury that if a servant claimed a right to overhaul his master's accounts, that would justify putting an end to the relation of master and servant. But he left it to the jury to say whether there was a reasonable ground for dismissal. It was objected that he ought to have decided this question himself. But the Court decided that there was no misdirection. See also *Read* v. *Dunsmore* (*b*); *Mercer* v.

(*y*) *R.* v. *Islip* (7 Geo. I.) Str. 422; *Rex* v. *Sudbrook* (1803), 1 Smith, 55; *Rex* v. *Winterset* (1783), Cald. 298; *Ex parte Harris* (1845), 1 De Gex, 165; *Carr* v. *Hadsill*, 39 J. P. 246; *K.* v. *Raschen* (1878), 38 L. T. 38; 42 J. P. 38 (no answer to an action for wages that plaintiff was ill and unable to work owing to his own misconduct); *Robinson* v. *Davison* (1871), L. R. 6 Ex. 269. In *Rex* v. *Sutton* (1794), 5 T. R. 657, it was held that absence in order to cure a hurt received by a servant in his master's service, or from insanity, does not by itself determine the relation of master and servant. See also as to insanity being ground of discharge, *R.* v. *Hulcott* (1796), 6 T. R. 583.

(*z*) See note (*a*).

(*a*) See note (*d*).

(*b*) (1840), 9 C. & P. 5

Whall (*c*); and *Horton* v. *McMurtry* (*d*). The authorities and the present practice are in favour of the statement given above.

It is not necessary that a servant should be dismissed by his master for a valid reason; it is sufficient if a valid reason in fact exists, even if the master be not aware of it at the time of dismissal.

There has been much discussion as to the limits of this rule, and considerable reluctance to adopt it. It was first laid down in *Ridgway* v. *The Hungerford Market Company* (*e*). It was followed in *Baillie* v. *Kell* (*f*). In this case it was supported by the analogy of justifications in actions of trespass and wrongful distress. A defendant may justify breaking and entering plaintiff's close under any sufficient legal process open to him at the time, and a person who is sued for distraining wrongfully may set up in justification any legal cause, even although in fact he distrained for another (*g*). So it was said that it mattered not what ground for dismissal the master alleged, it was enough that he had some good ground. At all events, the servant suffered no wrong. The rule was qualified thus in *Cussons* v. *Skinner* (*h*), by Baron Parke: where there has been "disobedience or an act of misconduct by a servant, known to the master at the time he discharges him, although he does not insist on that as the precise ground of the discharge, he may afterwards, by showing the fact existed, and that he knew it, justify such discharge."

(*c*) See (1845) 5 Q. B. 447.

(*d*) See especially remarks of Pollock, C.B., at p. 265, 29 L. J. Ex. 265, *Price* v. *Mouatt* (1862), 11 C. B. 508; *East Anglian Ry. Co.* v. *Lythgoe* (1851), 2 L. M. & P. 221

(*e*) See above. The head note to the report of this case limits the doctrine to cases in which the master had no knowledge of the facts constituting the justification. But no such limitation appears in the judgments.

(*f*) (1838) 4 Bing. N. 638.

(*g*) *Crowther* v. *Ramsbottom* (1798), 7 T. R. 654; *Grenville* v. *College of Physicians* (12 W. III.), 12 Mod. 386.

(*h*) (1843) 11 M. & W. 161, 172; *Smith* v. *Allen* (1862), 3 F. & F. 157, the ruling in which seems doubtful.

The introduction of this qualification was not necessary for the decision of the case, and it is to be observed that the Court quote as their authority *Ridgway* v. *The Hungerford Market Company*, where no such limitation is mentioned. In *Spotswood* v. *Barrow* (*i*) the Court of Exchequer followed *Ridgway* v. *The Hungerford Market Company*. The plaintiff, a traveller, was discharged by the defendants, his employers. They pleaded as a defence the fact that he had refused to obey lawful orders, and that he had misappropriated money paid to him by their customers. The misappropriation was proved at the trial; and the judge left it to the jury to say whether or not the defendants discharged the plaintiff for that cause. This was held to be a misdirection; the motives or intentions of the defendants being immaterial, if their conduct was in fact justified.

The fact of knowledge, however, may be sometimes material. According to one case, if it be alleged in the pleadings that the master have knowledge of certain facts, and that they were the reasons of dismissal, it may be incumbent on him to prove such knowledge (*k*). It might also be material in regard to the question of condonation (*l*).

When a servant is discharged for a valid reason before the expiration of the time for which he was engaged, he cannot recover the value of services which he has rendered under the contract.

This follows from the nature of indivisible contracts. Of course a servant does not forfeit wages which are due but not paid. The doctrine was above enunciated by Lord Ellenborough, who in a case at Nisi Prius in 1817—an

(*i*) (1850) 5 Ex. 110; see Alderson, B., in *Willets* v. *Green* (1850), 3 C. & K. 59.

(*k*) *Mercer* v. *Whall* (1845), 5 Q. B. 447, 466, by Denman, C.J.

(*l*) The rule has not been followed in America. Query—would a servant be able to set up, as ground of departure from service, a fact which he did not know at the time?

action by a farm servant who had been dismissed for disobedience (*m*)—said: "If the contract be for a year's service, the year must be completed before the servant is entitled to be paid." The rule does not seem to have been clearly settled in 1833, as appears from the remarks of Denman, C.J., in *Turner* v. *Robinson* (*n*). But it was laid down in *Ridgway* v. *Hungerford Market Company* (*o*), and *Lilley* v. *Elwin* (*p*); and, however harsh the rule may seem, it is undisputed. The same principle was recognised in the Court of Admiralty with respect to forfeiture of wages by desertion. It has, however, been modified by 17 & 18 Vict., c. 104, s. 243 (*q*).

A master is entitled to all the earnings of his apprentice. He is entitled to the earnings of his servant acquired while he is acting as servant.

There is no doubt as to the master's right to the earnings of his apprentice. It is affirmed in several cases, none of which have been overruled, that a master may sue for what his apprentice has earned, even when serving with some other person. In *Barber* v. *Dennis* (*r*), the apprentice of the widow of a waterman was impressed, and put on board a Queen's ship, where he earned two tickets; they came into the hands of the defendant. It was held that trover for the tickets lay. The same principles appear to extend to

(*m*) *Spain* v. *Arnott*, 2 Stark. 256.

(*n*) (1833) 6 C. & P. 15.

(*o*) (1835) 3 A. & E. 171.

(*p*) (1848) 11 Q. B. 742; *Searle* v. *Ridley* (1873), 28 L. T. 411. Of course the forfeiture will not affect wages which have already accrued due. In *Button* v. *Thompson* (1869), L. R. 4 C. P. 330, a mate, engaged at £5 10*s.* per month, under articles sanctioned by the Board of Trade, who was left behind through his own fault at one of the ports at which the ship stopped, was held entitled to his wages up to the time of being left behind. See also *Taylor* v. *Laird* (1856), 1 H. & N. 266; 25 L. J. Ex. 329. As to cases in which the contract of hiring expressly provides for forfeiture of wages, see *Taylor* v. *Carr* (1861), 30 L. J. M. C. 201, and *Walsh* v. *Walley* (1874), L. R. 9 Q. B. 367.

(*q*) Maclachlan on Law of Merchant Shipping, 3rd ed. 240.

(*r*) (1783) 6 Mod. 69; *Anon.* 12 Mod. 415.

servants. "They apply," said Cockburn, C.J., in *Morison* v. *Thompson* (*s*), "to all cases of employment as servants or agents, the profits acquired by the servant or agent in the course of, or in connection with, his services or agency belonging to the master or principal"; in other words, if the servant receives such earnings or profits he will be treated as the agent of his master, and an action will lie at the instance of the latter (*t*). No doubt a master, as between himself and his servant, is entitled to all which the servant earns as his servant; but as against third persons the master would seem to have a right to his servant's earnings only when he acted as his master's agent. If he hires a servant to design or invent, the inventions belong to the master. Such was the case in *Makepeace* v. *Jackson* (*u*), in which a calico printer was held entitled to a book in which his colour-man entered the recipes of processes, although the book contained processes invented by the latter. Should a master discover some valuable invention, and a workman whom he employs make a discovery subordinate and accessory to it, "such improvements," it has been said, "are the property of the inventor of the original improved principle, and may be embodied in his patent; and, if so

(*s*) (1874) L. R. 9 Q. B. 480; 43 L. J. Q. B. 215; 30 L. T. 869; 22 W. R. 859. The judgment of the Court is that of Cockburn, C.J.; Blackburn, J.; and Archibald, J. See also *Thompson* v. *Havelock* (1808), 1 Camp. 527.

(*t*) This case does not, however, it is submitted, overrule *Treswell* v. *Middleton*, Crok. Jac. 653; 2 Roll. 269. (Judgment for plaintiff, in action for debt against defendant who had retained his servant to make chairs for five days. Judgment reversed; debt did not lie because it may be the master never consented to the retainer, and the servant never intended to contract for his master.) *Carson* v. *Watts* (1784), 3 Doug. 350 (prize-money gained by apprentice serving on board ship-of-war does not belong to master of apprentice. This turned on usage); *Eades* v. *Vandeput* (1785), (25 Geo. 3), 5 East, 39n. (but see *Foster* v. *Stewart*); *Bright* v. *Lucas* (1796), 2 Peake, 12 (indentured apprentice who had deserted from his master's service cannot maintain action for wages); *Lightly* v. *Clouston* (1808) (the master of apprentice who has been seduced from his work may maintain action of *indebitatus assumpsit* against the person who has seduced him); *Foster* v. *Stewart* (1814), 3 M. & S. 191 (plaintiff's apprentice deserted from plaintiff's ship; went on board defendant's ship; defendant persuaded him to remain: held plaintiff could waive tort and bring action of *assumpsit* against defendant).

(*u*) (1813) 4 Taunt. 770. Here, however, the action was in trover for the book.

embodied, the patent is not avoided by evidence that the agent or servant made the suggestions of that subordinate improvement of the primary and improved principle" (*x*). But if an invention be discovered by a servant, the master, not being the first and true inventor, cannot get a patent (*y*). Accordingly Arkwright failed to obtain a patent for a certain roller when it was proved that he had been told of it by one Kay, whom he had had in his service and whom he employed in making models (*z*).

An apprentice cannot be dismissed by his master for misconduct unless there be a stipulation to that effect in the indenture of apprenticeship.

Thus, in an action against a master for refusing to instruct and maintain an apprentice, in which the former set up as a defence disobedience of orders and other acts of misconduct, the Court drew a distinction between the relation of master and servant and that of master and apprentice, and held that the latter contract could not be dissolved for acts of misconduct (*a*). "The master," Best, C.J., observed, "has at common law a complete remedy, if the apprentice misconducts himself, by an action for a breach of the covenants. The provisions contained in the statute relative to parish apprentices show that, at common law, the master could not determine the contract, if the apprentice misconducted himself" (*b*). So, in *Phillips* v. *Clift* (*c*), it was held to be no answer to an

(*x*) Erle, J., in *Allen* v. *Rawson* (1845), 1 C. B. 551, 567. But the above does not seem to be a principle of law, p. 576, and see *Bloxam* v. *Elsee* (1825), 1 C. & P. 558; *Rollo* v. *Thompson* (1857), 19 D. 994.

(*y*) *Rex* v. *Arkwright* (1785), cited in *Hill* v. *Thompson*, 8 Taunt. 395.

(*z*) Curtis, Patent Law, 101; and see *Re Russell's Patent*, 2 De G. & J. 130.

(*a*) *Winstone* v. *Linn* (1823), 1 B. & C. 460, 470; 2 D. & R. 465; *Wise* v. *Wilson* (1845), 1 C. & K., Denman, C.J., at p. 669.

(*b*) 20 Geo. II., c. 17.

(*c*) (1859) 4 H. & N. 168; 28 L. J. Ex. 153. See also *Addams* v. *Carter* (1862), 6 L. T. N. S. 130; *Mercer* v. *Whall* (1845), 5 Q. B. 447. In *Cox* v. *Mathews* (1861), 2 F. & F. 397, Byles, J., ruled that a

action against the master who had turned away his apprentice, that he conducted himself in so dishonest a manner that it became unsafe for the defendant to keep him in his service. The covenants in the indenture were independent; the master might have chastised his apprentice; he could not dismiss him. But a power to dismiss may be provided by the terms of the deed. Thus, where a master agreed to take plaintiff's son as an apprentice for three years and to teach him, and the agreement concluded, "provided always that he (the apprentice) obeys all commands and gives his services entirely to the business during office hours," misconduct on the part of the apprentice was held a good answer to an action for dismissing the apprentice (*d*).

jeweller would not be bound to retain an habitual thief as apprentice. In *Wise* v. *Wilson* (1845), 1 C. & K. 662, Denman, C.J., ruled that a doctor might dismiss a "pupil and assistant" if he endangered his master's practice by carelessness. On the other hand, probably, an apprentice, having reasonable grounds for fearing grievous bodily harm, may leave the service of his master; *Halliwell* v. *Counsell* (1878), 38 L. T. 176. 56 Geo. III., c. 139.

(*d*) *Westwick* v. *Theodor* (1875), L. R. 10 Q. B. 224; 44 L. J. Q. B. 110. The rule stated in the text appears to have been somewhat shaken, and in these days, when an apprentice is rarely sent to prison, it would be, perhaps, more correct to say, that the misconduct which would entitle a master to dismiss a servant will not entitle him to dismiss an apprentice. It is a good plea to an action for not teaching an apprentice, that the conduct of the apprentice was such as to prevent it. *Rayment* v. *Minton* (1866), L. R. 1 Ex. 244; 35 L. J. Ex. 3.

As to damages for breach of covenant in an indenture of apprenticeship, *Lewis* v. *Peachey* (1862), 1 H. & C. 518; 31 L. J. Ex. 496.

APPENDIX A.

1. The rules stated in the text as to the circumstances in which servants may be dismissed have been recognised for many years. It was, however, long supposed that a master had no right to dismiss a servant for disobedience or misconduct. In 19 Hen. VI., 30, cited in Brookes' Abridgment, title "Labourers," 27, it is said, "It seems the master cannot discharge his servant within the time, &c., unless he agree to it, no more than a servant can depart without the agreement of his master." See, however, Fitzherbert, 168. In Dalton's Justice, edition of 1697, p. 128, the same view is stated,—"The master cannot discharge his servant, during his term, without the agreement of the servant. And now by the statute 5 Eliz. 4, it must be for some reasonable cause to be allowed by one justice of the peace at least; otherwise the master shall forfeit forty shillings. *Tamen quære.* For where the departure or putting away of the servant is by the joint consent of the master and of the servant, such putting away or departure, seemeth not to be within the statute of 5 Eliz., neither is the allowance of the justice of the peace requisite or needful therein." "If a servant shall refuse to do his service, that is a departure in law, although he stay still with his master. If the master shall detain from his servant his wages, meat or drink, this is a good cause of departure: But yet this cause is now by the statute of 5 Eliz. to be allowed of by the justices of peace, before the servant may lawfully or safely depart. So if the master shall license his servant to depart, or if the master, or wife of the master shall beat the servant; these were good causes for the servant to depart, before the statute 5 Eliz. 4. But now the allowance of the justice of the peace is requisite as aforesaid." The fifth section of 5 Eliz. c. 4, stated "that no person which shall retain any servant shall put away his or her said servant unless it be for some reasonable and sufficient cause or matter to be allowed before two justices, or one at the least within the said county, &c." Some editors of the statute read differently the section which I have quoted; for "to" they read "or," as if resort to the justices were an alternate remedy. But the generally accepted reading, borne out by the statute itself, is that which I have given. The question was considered by the judges in 1633, and their answer is clear:—"If a woman being with child," say the judges in their resolution, "procure herself to be retained with a master who knoweth nothing thereof, this is a good cause to discharge her from her service. And if she be gotten with child during her service, it is all one. But the master in neither case must turn away such a servant of his own authority. But if her term be ended, or she

lawfully discharged, the master is not bound to provide for her," &c. Dalton's Justice, p. 165.

The law was so understood in 1773. Lord Mansfield in *Temple* v. *Prescott*, Cald. 14, n.—an action by a wet nurse who was discharged by her mistress—ruled that frequent acts of insolence to her mistress and fits of passion did not warrant her discharge. "No person," he said, "can be judge in his own cause ; and this first principle could not be meant to be overturned by any law or usage whatsoever." He refused to receive evidence of usage, now well recognised, to dismiss domestic servants on payment of a month's wages. See also *Rex* v. *Tardebrigg*, Sayer, 100 (1753). In 1777 Lord Mansfield and Willes, J., in *Rex* v. *Brampton*, had to consider the same point. Relying mainly upon a dictum in Viner's Abridgment, title Removal, p. 459, which does not bear out Lord Mansfield's statement, they ruled that a master was entitled to turn away a maidservant who was with child. "Shall the master," asked Lord Mansfield, "be bound to keep her in his house? To do so would be *contra bonos mores*, and in a family where there are young persons both scandalous and dangerous." This decision was put by Willes, J., on the ground that the justices had no jurisdiction in case of domestic servants. See *Rex* v. *Welford*, Cald. 56. To show how the law was understood till some time after *Rex* v. *Brampton*, I may refer to Mr. Bird's book on the "Law of Master and Servant," the first edition of which was published in the end of last century. In the third edition, published in 1801, he cites at p. 3 *Rex* v. *Brampton*, to show that notwithstanding the statute of Elizabeth, if a servant be guilty of incontinence or other moral offence whilst in his master's service, the master may discharge him without application to a justice. But Mr. Bird adds, "neither for rudeness or other misbehaviour of servant, can the master discharge him, before the end of his term, nor can the servant leave his master on account of ill-treatment by the master or mistress ; but in these and like cases, application must be made to a justice for a discharge as directed by the statute of Elizabeth." See remarks of Lord Kenyon in *Rex* v. *Hulcot* (1796), 6 T. R. 587, and *Rex* v. *Sutton* (1794), 5 T. R. 659.

Sections 5, 6 and 9 of the statute of Elizabeth are mentioned by Mr. Crabb in his Digest of Statutes as being in force in 1844 ; they do not seem to have been repealed until 1875. See Chitty's General Practice (edition of 1837), p. 76. I do not find any clear assertion of the principle, now universally admitted, that a master may for disobedience, &c., discharge any servant, until 1817, when Lord Ellenborough at Nisi Prius, in *Spain* v. *Arnott*, 2 Starkie, 256,—a case of a servant in husbandry—said, "He (the master) might have obtained relief by applying to a magistrate ; but he was not bound to pursue that course ; the relation between master and servant, and the laws by which that relation is regulated existed long before the statute." These words seem directly contrary to the express terms of the 5th section. (2) At

common law a person is not entitled to treat a contract as at an end for every breach, but only when there is a breach which goes to the root of the matter and which cannot be properly compensated for : *Simpson* v. *Crippin* (1873), L. R. 8 Q B. 14. When a singer who had engaged with defendant to sing for fifteen weeks, and who had agreed that he would be ready for rehearsals six days before the engagement commenced, failed to attend these rehearsals, it was held that the defendant was not entitled to refuse to take the plaintiff into his service : *Bettini* v. *Gye* (1876), L. R. 1 Q. B. D. 183.

No doubt failure or refusal on a single occasion to do what one was bound to do under a contract of personal service—as in *Poussard* v. *Spiers* (1876), L. R. 1 Q. B. D. 410, which was a case of failure on the part of a leading singer to join in the opening performance of a new opera—might go to the root of the contract and justify recision. But apart from the decisions which are quoted in the text, it might not have occurred to anyone that refusal by a maidservant to answer a bell, or by a clerk to fetch a book on a single occasion, would justify instant dismissal and forfeiture of wages : *Gould* v. *Webb* (1855), 4 E. & B. 933.

APPENDIX B.

There is an absence of authority in English law as to the place at which a servant is bound to serve, p. 184. The point has been much discussed in the Scotch Courts, and the following is said to be the rule on the subject :—"It seems to be the general opinion of lawyers, that all domestic servants, secretaries, and other servants similarly circumstanced whose duties have relation solely to the master's presence are bound to attend his movements, and cannot object to go with him from country to town, from town to country. But this under the following conditions : No servant is bound to go out of the British Isles to a foreign country, seeing that there he is without the protection of British law, and in circumstances, it may be, far different from those under which he would have lived in his own country. Nay, some lawyers think, that no servant hired in Scotland is bound to go to either England or Ireland." "In the case of servants whose work has reference to a *place*, not to the master's *person*, such as overseers, ploughmen, or workmen at manufactories, the master cannot remove the servant to any other farm or manufactory at any distance inconvenient to the servant. The place where the master has his work at the time of the engagement would be held the place where (in the absence of express stipulation) it is implied that the servant was to labour ; and,

having once entered to his service, he cannot be removed to any place which may occasion him trouble or expense." Campbell's edition of Fraser's Law of Master and Servant, pp. 83 and 352.

The above distinction between servants whose work has reference to a place, and those whose work has reference to a master's person, seems to be recognised in all systems of jurisprudence; Savigny, Obligationenrecht, I. 49; Levi, Della Locazione; *Anderson* v. *Moon* (1837), 16 S. 412.

It was decided in *Coventry* v. *Woodhall*, Hob. 134, that "generally no man can force his apprentice to go out of the kingdom, unless it be so expressly agreed, or that the nature of his apprenticehood doth import it, as if he be bound apprentice to a merchant adventurer or a sailor, or the like."

CHAPTER XXIII.

RIGHTS OF MASTERS AGAINST THIRD PERSONS.

MASTERS may recover damages against persons who wrongfully deprive them of the services of their servants.

The rights of masters and servants arise out of contract. It might therefore be supposed that they would consist merely of rights *in personam* and not of rights *ad rem*. This, however, is not entirely the case. The relation is, in some respects, status. The master's rights to the labour of his servants are regarded as rights *ad rem*; they are somewhat of the nature of property (*a*).

Such a right of action as that which is above stated existed from early times. According to Bracton (*b*), the master might bring an action for insult and disgrace inflicted upon his servant, apparently though he had not lost service (*c*). Actual bodily injury was not necessary to sustain such an action; mere intimidation or menaces were enough, as appears by 40 Ed. III. and 20 Hen. VII., p. 5 (*d*).

The rule clearly recognised nowadays is, that the master may recover damages from persons who have wrongfully

(*a*) Introduction, note (*a*).

(*b*) Bracton, 115 and 155. See Bigelow on Torts, p. 224.

(*c*) The rule was different in Britton's time. Nicholl's Britton, i. p. 131.

(*d*) See also Pulton *de Pace Regis*, 3, 4. It may be noted that according to Pulton, the master's remedy for menaces to his servant extended to a "servant, tenant, or any other person by whom he liveth or receiveth benefit."

injured his servants, provided a loss of service is thereby caused (*e*).

Thus actions have been brought by masters against persons for negligently driving over a servant (*f*), administering injurious drugs to him (*g*), or for injuries from the bite of a dog (*h*). Common instances of such actions are those which are brought against persons who knowingly entice away or procure the departure of servants (*i*). To sustain such an action, it is not necessary to prove any binding contract of services (*l*); it will be enough for the plaintiff to show that he was actually receiving the benefit of certain services at the time at which the injury of which he complains was committed, and that the defendent was aware of this fact. In *Lumley* v. *Gye* (*m*), it was held that an action might be brought by one theatre manager against another for procuring a prima donna to break her engagement to sing at the theatre of the former. In short, the action lies when the relation of master and servant does not in the strictest sense exist.

The Courts have extended the action for loss of service to the case of children who are injured, a child being constructively in the service of its parent. There must, however, be some foundation for the theory. A father will not

(*e*) Would an action lie for inducing a master to discharge workmen?

(*f*) *Martinez* v. *Gerber* (1841), 3 M. & G. 88.

(*g*) Bacon's Abridgment, Master and Servant, O.

(*h*) *Hodsoll* v. *Stallebrass* (1840), 11 A. & E. 301.

(*i*) The Scotch courts have held that a master is entitled to damages from one who induces a servant to reveal the secrets of his master's trade. Fraser, 314. See as to the above class of actions *Hall* v. *Hollander* (1825), 4 B. & C. 660; *Lewis* v. *Fogg* (1732), 2 Str. 944; *Fores* v. *Wilson* (1791), Peake, 78.

(*l*) *Evans* v. *Walton* (1867), L. R. 2 C. P. 615; 36 L. J. C. P. 307; 15 W. R. 1062; 17 L. T. N. S. 92; *Lumley* v. *Gye* (1853), 2 E. & B. 216; 22 L. J. Q. B. 463; 17 Jur. 827; *Bowen* v. *Hall* (1881), L. R. 6 Q. B. 333. Trespass will lie for enticing away a journeyman, *Hart* v. *Eldridge* (1774), Cowp. 54, although only hired by the piece and not for any certain time. Trespass will not lie for inducing a servant to leave at the expiration of the period for which he was engaged, although he had no intention at the time of leaving, *Nichol* v. *Martin* (1799), 2 Esp. 734. As to evidence of enticing away, *Keane* v. *Boycott* (1795), 2 H. B. 512.

(*m*) See note (*l*).

be able to recover damages if his child be incapable by reason of youth, as in *Hall* v. *Hollander* (*n*), of rendering services.

This remedy has been used by a sort of fiction for the purpose of punishing seducers of women. The action is based upon loss of service, and is said to be maintainable only when the relation of master and servant exists (*o*). But in order to extend the remedy, the Courts have been inclined to find that relation, when in point of fact it does not exist. Proofs of trivial acts have been accepted as evidence of service. It is enough that there is a service at will. The fact that a daughter, as in *Rist* v. *Faux* (*q*), assisted in household work after coming home in the evening from the fields where she worked for hire, has been held sufficient. The length to which the Courts have gone is seen by *Evans* v. *Walton* (*r*), which was an action for enticing away the plaintiff's daughter. She resided with her father and assisted him in his business as a licensed victualler, but she was free to leave at any time. Having quitted home with her mother's consent, she was seduced. The Court thought that, as she had been induced to quit a continuing service, an action was maintainable.

On the other hand, no action will lie for enticing away an apprentice if there exist no valid contract of apprenticeship. In a case in which an indenture was void by reason of the 8th of Ann. c. 9, sec. 35 & 39, for not truly and fully setting forth the consideration or premium paid, the

(*n*) (1825), 4 B. & C. 660.

(*o*) *Fores* v. *Wilson* (1791), Peake N. P. 77; *Thompson* v. *Ross* (1859), 5 H. & N. 16.

(*q*) (1863), 4 B. & S. 409; but see *Dean* v. *Peel* (1804), 5 East, 45; and *Hedges* v. *Tagg* (1872), L. R. 7 Ex. 283 (plaintiff's daughter, a governess, seduced while on a three days' visit with her employer's permission at her mother's home; she gave some assistance in household work during her visit; at time of her confinement she was in service of another employer, and afterwards returned home to her mother; no action because no evidence of service at the time of seduction; and by Kelly, C. B., Martin, Bramwell, BB., because confinement did not take place while daughter in plaintiff's service). But see *Long* v. *Keightley* (1877), 11 Ir. C. L. 221, *Joseph* v. *Corvander* (1834), and Roscoe on Evidence, 13th ed. 878.

(*r*) See note (*l*).

Court of Common Pleas held that a count for enticing away could not be sustained (*s*).

An action will lie, not only against one who wrongfully seduces or entices away a servant, but against one who knowingly harbours or employs the servant of another (*t*). But there is an important distinction between the two kinds of action. The action for enticing away or seduction may be maintained, as has been stated, when no binding contract of service exists, when service *ex gratia* or *de facto* is suspended in consequence of the persuasion or procurement of the defendant. The action for harbouring or taking into service the servant of another will, for obvious reasons, not be sustainable unless there has been a binding contract; the contract may be voidable, but it must not be void. Accordingly, when A. took into his service C., who had been working for B. under a contract void by reason of the Statute of Frauds, and refused to discharge C. after receiving notice from A., it was held that no action lay against A. (*u*). To sustain either an action for enticing away or harbouring, it is necessary that there should be notice of the existence of the contract of service (*x*).

If the injuries wrongfully inflicted upon a servant cause his immediate death, the master has no right of action.

The reason of this qualification is very obscure. It was quaintly said by Tarfield, J., in *Higgins* v. *Butcher* (*y*), "That the servant dying of the extremity of a battery, it is now

(*s*) *Cox* v. *Muncey* (1859), 6 C. B. N. S. 375.

(*t*) *Blake* v. *Lanyon* (1795), 6 T. R. 221; *Ashcroft* v. *Bertles* (1796), 6 T. R. 652.

(*u*) *Sykes* v. *Dixon* (1839), 9 A. & E. 693; 1 W. W. & H. 120; *Pilkington* v. *Scott* (1846), 15 M. & W. 657.

(*x*) *Fawcet* v. *Beavres* (1671), 2 Lev. 63; *Fosset* v. *Breer* (1671), 3 Keb. 59; *Fores* v. *Wilson* (1791), Peake, 77. (No notice necessary in case of action of seduction.)

(*y*) (1606), Yelv. 90. Notice does not seem to have been required when the Statute of Labourers was in force.

become an offence to the Crown, being converted into a felony, and that drowns the particular offence and private wrong offered to the master before, and his action is thereby lost." There are several objections to this explanation, which was a dictum not essential to the decision of the case. One of these is the fact that *White* v. *Spettigue* (*yy*), followed in this respect by *Osborne* v. *Gillett* (*z*), has decided that the rule as to a right of action being suspended in case of felony applies only between the person injured and the criminal; it does not affect a third party, such as the master. According to another explanation, "The master's right to his servant's services is instantly abrogated, and, in the eye of the law, no damage is sustained by him because no right" (*a*). This reason explains nothing. Does not a right of action accrue to the master between the moment when the injury was inflicted or the wrong done, and the moment when death took place? And, if it does accrue, what becomes of it? Probably the rule originated in a mistake as to the meaning of the maxim *Actio personalis moritur cum persona*. The existence of the rule has been disputed by some American Courts (*c*). Whatever be its origin, it is in force. It was stated in *Higgins* v. *Butcher*, it was affirmed by Lord Ellenborough at *nisi prius* in *Baker* v. *Bolton* (*d*), decided in 1808. It has found its way into text books (*e*), and it was recognised by the Court of Exchequer (Bramwell, B., dissenting) in 1873 in *Osborne* v. *Gillett*.

When the injury to a servant is the result of a breach of contract to which the master is not a party, no action can be brought by him.

Thus, when a servant was hurt while on a railway journey,

(*yy*) (1845), 13 M. & W. 603.
(*z*) (1873), L. R. 8 Ex. 88.
(*a*) Even in *Osborne* v. *Gillett* the rule seems to have been misunderstood.
(*c*) Wood, 438.
(*d*) (1808), 1 Camp. 493.
(*e*) The whole subject is discussed in *Ex parte Ball* (1879), L. R. 10 Ch. D. 667, and in Mr. Justice Watkin Williams' learned judgment in *Midland Insurance Co.* v. *Smith* (1882), L. R. 6 Q. B. D. 651.

it was held that the master, not being privy to the contract, could not sue for loss of service (*f*). But where a servant had been injured by a collision caused by the negligence of another company than that with which the contract of carriage was made, the master recovered damages for loss of service (*g*).

(*f*) *Alton* v. *Midland Ry. Co.* (1865), 19 C. B. N. S. 213 ; 34 L. J. C. P. 292 ; 13 W. R. 918 ; 12 L. T. N. S. 703. This decision has been much criticised. See *Ames* v. *Union Ry. Co.* (1875), 19 Am. Rep. 426.

(*g*) *Berrington* v. *Great Eastern Ry. Co.* (1879), 4 C. P. D. 163.

APPENDIX A.

The following are the chief cases as to actions of seduction :—

ACTION.

Bennett v. *Allcott* (1787), 2 T. R. 166 (person seduced of full age); *Edmondson* v. *Machell* (1787), 2 T. R. 4 ; *Fores* v. *Wilson* (1791), Peake, 77 (servant not related to her master) ; *Mann* v. *Barrett* (1806), 6 Esp. 32 (plaintiff's daughter lived with her brother, but went every day to her father's house to do all the household work) ; *Speight* v. *Oliveira* (1819), 2 Stark, 493 ; *Manvell* v. *Thompson* (1826), 2 C. & P. 303 (plaintiff's niece entitled on coming of age to £500 ; occasionally assisted in the household work) ; *Harper* v. *Luffkin* (1827), 7 B. & C. 387 (married woman living with her father and acting as servant) ; *Maunder* v. *Venn* (1829), M. & M. 323 (no proof of acts of service, but father had right to daughter's services. Littledale, J.). *Holloway* v. *Abell* (1836), 7 C. & P. 528 (A. occupied two farms seven miles apart ; A. resided at one, and his son and daughter at another ; the daughter acted as mistress at the latter farm-

NO ACTION.

Saterthwaite v. *Duerst* (1785), 5 East, 47n ; *Reddie* v. *Scoolt* (1795), Peake, 316 (plaintiff permitted a man whom he knew to be married to visit his daughter as suitor) ; *Dean* v. *Peel* (1804), 5 East, 45 (plaintiff's daughter in service of another at time of seduction, and did not intend to return to plaintiff's house) ; *Carr* v. *Clarke* (1818), 2 Chit. 261 (no action when daughter not in father's service, but he receives part of her wages) ; *Harris* v. *Butler* (1837), 2 M. & W. 539 (plaintiff's daughter apprenticed to defendant's wife) ; *Blaymire* v. *Haley* (1840), 6 M. & W. 55 (action does not lie where daughter in domestic service of another, though she was there with the intention on her and her father's part to return, on quitting her present situation, to her father's house if she got no other situation) ; *Grinnell* v. *Wells* (1844), 7 M. & G. 1033 (some proof of loss of service necessary) ; *Eager* v. *Grimwood*

Action.

house; the daughter seduced; action lay. Littledale, J.); *Griffiths* v. *Teetgen* (1854), 15 C. B. 344 (A. agreed with B. that B.'s daughter, who was then residing with him, should enter A.'s service to assist him in business during the temporary absence of A.'s wife; action lay at suit of B. for seduction by A. during that period); *Rist* v. *Faux* (1863), 32 L. J. Q. B. 386 (plaintiff's daughter after day's work as servant in husbandry performed services for her father); *Ogden* v. *Lancashire* (1866), 15 W. R. 158 (plaintiff's daughter lived with her father; worked during day at defendant's mill; did washing and other domestic duties for plaintiff); *Terry* v. *Hutchinson*, L. R. (1868), 3 Q. B. 599; 37 L. J. Q. B. 257 (plaintiff's daughter having left her situation was seduced on her way home to her father's house).

Long v. *Keightley* (1877), 11 Ir. C. L. 221. (Plaintiff's daughter, twenty-four years of age, seduced in the house, and while in the service, of plaintiff, her mother.) In accordance with a previous arrangement, she left the day afterwards for America; finding herself pregnant, she went to her sister's house, and resided there until after her confinement; subsequently she returned to the plaintiff's house. Evidence to go to jury of loss of service.)

No Action.

(1847), 1 Ex. 61 (some proof of loss of services necessary); *Davies* v. *Williams* (1847), 10 Q. B. 725 (plaintiff's daughter when seduced not in plaintiff's service); *Thompson* v. *Ross* (1858), 5 H. & N. 16; 29 L. J. Ex. 1; 1 L. T. N. S. 43 (no action where daughter does not reside in house, though, with permission of her master, she has been in the habit of assisting her mother in her business); *Manley* v. *Field* (1859), 7 C. B. N. S. 96 (plaintiff's daughter had a house of her own); *Hedges* v. *Tagg*, L. R. 7 Ex. 283; 41 L. J. Ex. 169. See page 230.

The action may be brought by master (*Fores* v. *Wilson*), brother, aunt, *Edmondson* v. *Machell*, 2 T. R. 4, or by a person who has adopted a friend's daughter, *Irwin* v. *Dearman*, 11 East, 23.

CHAPTER XXIV.

DISSOLUTION OF THE CONTRACT OF HIRING AND SERVICE. (*By Death*).

CONTRACTS of hiring and service are terminated by the death of the master or the servant.

The general rule is that executors or administrators are liable upon the contracts of the deceased, though they are not named (*a*). It is, however, an implied condition in contracts of service, requiring personal skill or taste, that they are terminated by death (*b*). "Where personal considerations," says the Court in *Farrow* v. *Wilson* (*b*), "are the foundation of the contract, as in cases of principal and agent, and master and servant, the death of either of the parties puts an end to the relation; and, in respect of service after death, the contract is dissolved, unless there be a stipulation, express or implied, to the contrary." "All contracts for personal service," said Pollock, C. B., in *Hall* v. *Wright* (*c*)—and the dictum is quoted with approval by Kelly, C. B., in *Robinson* v. *Davison* (*d*)—"which can be

(*a*) Parke, B., in *Saboni* v. *Kirkman* (1836), 1 M. & W. 423; Willes, J., in *Farrow* v. *Wilson*. See next note.

(*b*) (1869), L. R. 4 C. P. 744; 38 L. J. C. P. 326. (Farm bailiff engaged at weekly wages; service to be determinable by six months' notice, or payment of six months' wages. Administratrix not bound to continue the bailiff in her employment, or to pay him six months' wages after the master's death.) *Barker* v. *Parker* (1786), 1 T. R. 287. But see *Stubbs* v. *Holywell Ry. Co.*, L. R. 2 Ex. 311; 36 L. J. Ex. 166. Marriage does not operate as a dissolution of contract. Chitty's General Practice, vol. i. 770; Burn's Justice, 222.

(*c*) (1859), E. B. & E. 746, 793; 29 L. J. Q. B. 43.

(*d*) (1871), 6 L. R. Ex. 269; 40 L. J. Ex. 172; 24 L. T. 755; 19 W. R. 1836. See Blackburn, J., in

performed only during the lifetime of the party contracting, are subject to the implied condition that he shall be alive to perform them." Hence a contract of apprenticeship (*e*) has been held to be determined by the death of one of the parties. No doubt such a contract may be drawn so as to prevent this taking place. In *Cooper* v. *Simmonds* (*f*), a lad was bound to a tradesman and "his executors" carrying on the same business in the same town. Notwithstanding the death of the master the apprentice was bound to serve his widow, the executrix, while she continued the same business.

The chief difficulty is with respect to the servants of partners. The death of a partner dissolves a partnership in the absence of an agreement to the contrary (*g*); and if the rule be, as is sometimes alleged, that the dissolution of partnership terminates all contracts of hiring and service (*h*), the death of one partner would bring this about. This view is supported by *Tasker* v. *Shepherd* (*i*). The plaintiff was employed as agent by a firm composed of two partners. The Court held that the death of one of them terminated the relation of agency. But this view was questioned by Martin, B., in *Tasker* v. *Shepherd* and in *Hobson* v. *Cowley* (*k*). There

Taylor v. *Caldwell* (1863), 3 B. & S. 826, 835; 32 L. J. Q. B. 164.

(*e*) *Baxter* v. *Burfield* (1747), 2 Stra. 1266; *R.* v. *Chirk* (1774), Bur. S. S. 782.

(*f*) (1862), 7 H. & N. 707; 30 L. J. Ex. 207.

(*g*) Pollock on Contracts, p. 64.

(*h*) Wood, 308.

(*i*) (1861), 6 H. & N. 575; 30 L. J. Ex. 207; see also *Rawlinson* v. *Moss* (1861), 30 L. J. Ch. 797. (Dissolution of partnership of solicitors amounts to a discharge of client.)

(*k*) (1858), 27 L. J. Ex. 205, 208. (Plaintiff agreed with defendants, C. and M., to serve for seven years; L. came into the firm in place of M.; plaintiff signed a memorandum, which stated "that, in consideration that a new agreement is entered into with the new firm, he was willing to cancel the old agreement, evidence of plea of exoneration, even if dissolution of partnership was a breach of contract." *Dobbin* v. *Foster* (1844), 1 C. & K. 353. (A., B., and C. partners. D. engaged to serve them as foreman for twelve years; C. quitted the business, and D. continued to serve A. and B. Plaintiff sued A., B., and C. on the original agreement: Coleman, J., ruled "C.'s going out of the concern did not *per se* put an end to the agreement. D. entitled to sue A., B., and C.") See also *Hoey* v. *McEwan*, 4 June, 1867; 5 Macph. 814; 39 Jur. 450. (Agreement between a firm and their clerk; the clerk engaged for five years, at a salary of £300 a year, and percentage of profits; the firm dissolved by death of one of the partners: held *inter alia* that the contract of service, being personal, was determined.) *R.* v. *St. Martins*

may seem some reasons against it where a change in the partnership involves no change in the duties of the servant; and it may be urged that the decision in *Tasker* v. *Shepherd* turned on the construction of the particular contract before the Court, which was made with reference to partnership business, and in which was a proviso that the servant should be paid according to the profits of the firm. But, on principle, it seems clear that a contract in which A. contracted to serve B. and C., would not be binding between A. and C. only.

There are few authorities with regard to the question whether, if a master assumes partners, they will have the rights of masters over servants. The law upon the subject is thus stated in Fraser's Law of Master and Servant (*l*): "He (a partner) cannot assume partners who will have the right of masters over domestic servants, governesses, or perhaps over clerks. It is part of such agreements that the servant shall do the work of the master who hires him, and of him alone. With regard, however, to artisans, it has been found that they cannot consider themselves free, although their master assume a partner along with himself, who will have the rights of a master. This is a contingency to be looked for and expected; and it would often be productive of ruinous consequences, if, on such a common event, the whole servants of a large establishment were freed from their contracts. This was decided in a case where a master, conducting business alone, assumed two partners. But an opinion was expressed that it would have been different if the original master had not remained in the firm" (*m*). It is submitted that in English law it would be generally a question whether there was a novation; if there was no novation, the new partner would not have the rights of a master.

(1835), 2 A. & E. 655, and the cases in which bonds are given by sureties to partners for good conduct of clerks and servants. The security does not apply when a change by death or otherwise occurs in the partnership; *Chancellor of the University of Cambridge* v. *Baldwin* (1839), 5 M. & W. 581; *Simson* v. *Cooke* (1824), 1 Bing. 452: Addison on Contracts, 7th ed. p. 857.

(*l*) p. 123.

(*m*) *Harkins* v. *Smith*, March 11, 1841; 16 F. 938.

Dissolution of Contract by Consent.

The contract may, of course, be dissolved by consent of both parties, express or implied (*o*). No particular words are required, and consent may be implied from conduct. In a Scotch case, decided in 1815, an apprentice was impressed as a seaman; he remained in the navy sixteen years, and he returned home having reached the rank of lieutenant. His master made a claim for breach of contract, but the Courts thought that the fact that he had not made the claim for a number of years amounted to a tacit permission to the apprentice to consider himself released (*p*).

A master who had made no effort to reclaim an apprentice for years, would no doubt be regarded as having tacitly consented to his release.

Bankruptcy.

Bankruptcy does not operate as a dissolution of a contract of hiring and service (*q*).

The contract of apprenticeship is terminated by bankruptcy.

The Bankruptcy Act of 1869, sec. 33, provides that, where at the time of the presentation of the petition for adjudication, any person is apprenticed or is an articled clerk to the

(*o*) *Rex* v. *Weddington* (1774), Bur. S. C. 766; *Rex* v. *Harburton* (1789), 1 T. R. 139; on other hand, *Rex* v. *Warden* (1828), 2 M. & R. 24, and *Rex* v. *Skeffington* (1820), 3 B. & A. 382.

(*p*) Fraser's Master and Servant, 3rd ed. p. 315.

(*q*) *Thomas* v. *Williams* (1834), 1 A. & E. 685; 3 N. & M. 545, clerk hired by the year continues in bankrupt's office after bankrupt. In the middle of year by mutual consent contract is rescinded; clerk not barred by certificate from recovering all the wages due from the expiration of the year last before the commission up to the time of rescinding, nothing being due, and proveable at the date of issuing the commission. It is almost needless to say that the assignees of the bankrupt could not require the fulfilment of the contract of service by a servant Abinger, C.B., in *Gibson* v. *Carruthers* (1841), 8 M. & W. at p. 343.

bankrupt, the order of adjudication shall, if either the bankrupt or apprentice require notice in writing to the trustee to the effect, be a complete discharge of the indenture of apprenticeship or articles of agreement.

A trustee has no right to the proceeds of the personal and daily labour of a bankrupt.

The old law—and it is still in force—was that wages earned by a bankrupt before his discharge did not pass to his assignees, at all events so far as the wages were necessary to his maintenance (*r*). *Williams* v. *Chambers* (*s*) decided that the assignee of an insolvent debtor could not recover in respect of work and labour performed by the debtor if the remuneration were necessary for his maintenance. But if the claim were not for "mere personal labour"—if, as in *Elliot* v. *Clayton* (*t*), the claim were for medical attendance and medicines, or for services rendered by a furniture broker, who employed men and vans in the course of the services for which he sued (*u*)—a different rule prevailed. No doubt, too, if a person accumulated a large sum, even by personal labour, the assignees might claim it (*x*). In like manner the trustee, and not the bankrupt, could sue in respect of a sum which was not the remuneration for work and labour, but damages for breach of contract; as in *Wadling* v. *Oliphant* (*y*), where the trustee was entitled to claim a sum awarded by the Court of Chancery to the bankrupt, after

(*r*) *Chippendall* v. *Tomlinson* (1785), 4 Doug. 318. (In this case the assignees did not interfere.) *Silk* v. *Osborn* (1794), 1 Esp. 139; *Ex parte Walters* (1842), 2 M. D. & D. 635; *Ex parte Grimstead* (1844), De G. 72.

(*s*) (1847), 10 Q. B. 337.

(*t*) (1851), 16 Q. B. 581.

(*u*) *Crofton* v. *Poole* (1830), 1 B. & Ad. 568.

(*x*) *Hesse* v. *Stevenson* (1803), 3 B. & P. 578.

(*y*) (1875), L. R. 1 Q. B. D. 145. See also *Beckham* v. *Drake* (1847), 2 H. of L. C. 579, right of action for breach of agreement to hire for seven years which accrued before bankruptcy passed to assignees, and on the other hand *Ex parte Dewhurst* (1871), L. R. 7 Ch. 185.

bankruptcy and before discharge, in lieu of proper notice of dismissal.

"If salary or wages, or commission under a contract of service," says Wilde, C. J., in *Beckham* v. *Drake* (*z*)—in which the question was whether a sum in the nature of a penalty for breach of a contract to employ passed to the assignees of a servant—"are due at the time of the bankruptcy, the right to recover such wages, salary, or commission, would pass to the assignees as part of the personal estate, without regard to the consideration of whether the contractor's services had had relation to the personal skill or labour of the bankrupt," &c. . . . To the argument that the action was personal to the bankrupt, Wilde, C.J., replied, "It arose out of a contract founded on the personal confidence in the bankrupt, and which could only be performed by his personal labour and skill; and, in the same sense, contracts are personal made with factors, salesmen, agents of various kinds, masters of ships, bankers, attorneys, architects, engineers, and various other persons whose personal skill, knowledge, and integrity, are the inducements to the contracts. But surely it cannot be contended that the right of action for breaches of contract in relation to such employments accruing before the bankruptcy would not pass to the assignees." In *Emden* v. *Carte* (*a*), the trustee of an architect was held entitled to sue for remuneration in respect of a contract to employ the bankrupt as architect, and for damages for wrongful dismissal from such employment. The circumstance that the master is likely to become bankrupt, or that his property has been all taken in execution, will not exonerate the servant from performance of his contract" (*b*).

Sec. 90 of the Act of 1869 says that, "where the bankrupt is in receipt of a salary or income other than as aforesaid (officers, &c.), the Court, upon the application of the trustee,

(*z*) (1849), 2 H. L. C. 633.
(*a*) L. R. (1880), 17 Ch. D. 169; L. R. 17 Ch. D. 768; also *Wadling* v. *Oliphant*, L. R. 1 Q. B. 145.
(*b*) Wood, 307.

shall from time to time make such order as it thinks just for the payment of such salary, income, or of any part thereof, to the trustee during the bankruptcy, and to the registrar if necessary after the close of the bankruptcy, to be applied by him in such manner as the Court may direct."

CHAPTER XXV.

ASSIGNMENT OF PERSONAL CONTRACTS.

CONTRACTS of hiring and service cannot be transferred or assigned without the consent of the parties thereto (*a*).

Master and servant both contract with regard to the personal qualities of each other. The relation is one of personal confidence, and the one cannot compel the other to accept a third person in substitution. If A., for example, sells his business to B., he cannot turn over D., his servant, to the purchaser. Neither will a servant be permitted to say to his master, "I decline to work myself, but I have procured a competent substitute," or, "I have let out a part of the work." In one case the plaintiff was employed as master of a ship; he engaged A. to act for him. In an action which the former brought for wages, it was held that B. could not recover, as the contract contemplated personal service (*b*).

In like manner the contract of apprenticeship is *primâ facie* not assignable (*c*). As it is expressed in *Coventry* v. *Woodhall*, "The matter of putting an apprentice is

(*a*) Addison on Contracts, 7th ed., 311; Pollock on Contracts, p. 411.

(*b*) *Campbell* v. *Price* (1831), 9 S. 264; *Schmaling* v. *Tomlinson* (1815), 6 Taunt. 147. (A. employed by defendant to carry goods to a foreign market; A. delegated the performance to plaintiff, who did the work without knowledge of the defendant; plaintiff could not recover compensation for services from defendant). See also *Stevens* v. *Benning* (1854), 1 K. & J. 168; 6 D. M. & G. 223 (agreement between author and publisher); *Robson* v. *Sharpe* (1831), 2 B. & A. 302. As to servant agreeing to serve master's assignee, *Benwell* v. *Inns* (1857), 26 L. J. Ch. 663.

(*c*) *Baxter* v. *Burfield* (1747), 2 Str. 1266; *Horne* v. *Blake*, 2 Str. 1267.

a matter of great trust, for his diet, for his health, for his safety; and therefore I will, by choice, commit him to one and not to another" (*d*). Such a contract, however, may be assignable if the master's assignees, or executors are named (*e*), or if there be, as is the case in the City of London, a custom in virtue of which an apprentice may be turned over to a new master (*f*).

(*d*) Hob. 134 A.

(*e*) *Cooper* v. *Simmonds* (1862), 7 H. & N. 707; 31 L. J. M. C. 138. An infant bound himself apprentice to a tradesman, his executors and administrators for seven years carrying on the same business in the town of Wolverhampton; the apprentice bound to serve the widow, who was sole executrix, and who carried on the same business in Wolverhampton.

(*f*) *Rex* v. *Peck* (1699), 1 Salk. 66; *Bowchier* v. *Coster*, Keble, 250. But apparently, the assignee could not sue on the deed; Show. 4. There are authorities (*Wadsworth* v. *Gye*, Sid. 216; *Walker* v. *Hull*, 1 Lev. 177) that where a master covenants to find the apprentice in meat, drink, and necessaries during the term of apprenticeship, his executors are bound to perform the covenant. But query. As to right to appoint deputies, *Phelps* v. *Winchcombe*, 3 Bulst. 77; *Walsh* v. *Southworth*, 6 Ex. 150.

CHAPTER XXVI.

SERVANT'S AUTHORITY AS TO CONTRACTS.

A SERVANT may bind his master by contracts (1) when he is specially authorised to do so; (2) when he is placed in a position of trust for the due discharge of which authority to make such contracts is necessary or usual; or (3) when third persons have reason to believe from his master's conduct that he has authority to bind his master.

When a master entrusts to a servant the performance of certain duties, it will be held that there is an implied authority or mandate to enter into contracts which are necessary or usual for the performance of such duties, and persons dealing with servants will not be affected by restrictions which are placed upon the servants' authority unless such restrictions are known to them (*a*).

The relation of master and servant invests the latter with no authority to bind the former (*b*), but the servant may have from the particular duties assigned to him the right to bind his master in regard to contracts. When, for instance, a foreman employed by the owner of a sawmill agreed to supply a quantity of fir-staves, the latter, it was held, was bound by the contract though he had given his foreman no special authority to enter into it (*c*). It will often be left to a jury to say whether

(*a*) For early authorities on this subject, see Doctor and Student, II., chap. xlii., and Noy's Maxims, p. 58. One can see by *Nickson* v. *Brohan*, 10 Mod. 110, how uncertain the law was in 1710. See *Hibbs* v. *Ross* (1866), L. R. 1 Q. B. 534.

(*b*) Leake on Contracts, 467.

(*c*) *Richardson* v. *Cartwright* (1844), 1 C. & K. 328. Compare *Daun* v. *Simmins* (1880), 44 J. P. 284.

a servant had authority to enter into a particular contract. Thus in *Langan* v. *The Great Western Railway Company* (*d*), passengers injured in a collision on defendants' line were carried into plaintiff's inn. The sub-inspector of railway police for the district, who was for the time being the superior of all the station-masters and servants of the company, was on the spot; and he ordered brandy to be given to one of the injured persons. In reply to a question put by the plaintiff as to who would pay for the maintenance of the injured persons, he said, "Don't trouble yourself about that; we'll see that is all right." The plaintiff brought an action against the defendants for board, lodging, and necessaries supplied to the injured passengers. It was held, affirming the view of the Queen's Bench, that there was evidence to go to the jury in favour of the plaintiff. "The sub-inspector," said Bramwell, B., "was the chief person there. It was the interest of the company that the mischief resulting from the accident should be the smallest possible, if the company were liable, and the company might be. Then is there a necessity under circumstances such as these, for what may be called instantaneous action? Surely it is reasonable to say that the person who is chief in office where the accident takes place, should have authority to do those things which must be done at once, and which are presumably for the benefit of the company." On the same principle of what is sometimes called "necessary authority," the servant of a horse-dealer, or livery stable keeper, was entitled to bind his master by giving a warranty, although he had express orders not to give it (*e*). On the other hand, if the servant of a person who does not carry on the business of horse dealing, is entrusted to sell a horse on one occasion, and gives a warranty without authority from his master, it will not be binding (*f*).

(*d*) (1874), 30 L. T. 173.

(*e*) *Howard* v. *Sheward* (1866), L. R. 2 C. P. 148; 36 L. J. C. P. 42; 12 Jur. N. S. 1015. In this case evidence of a general practice among horse dealers not to warrant was held to be not admissible.

(*f*) *Brady* v. *Todd* (1861), 9 C. B. N. S. 592; 30 L. J. C. P. 223; 4 L. T. N. S. 212; 9 W. R. 483;

There is no implied authority to do what is unusual; and hence when an agent appointed by a mining company to manage a mine, borrowed money of the plaintiffs who were bankers, it was held he had no authority to bind the company (*g*). So owners of a ship are bound by contracts of a master with respect to the usual employment of the ship (*h*). But he cannot bind the owners to a contract at variance with the usual employment of the ship, *e.g.*, to carry goods for freight payable to other than the owner (*i*). The distinction is often expressed by saying that when a man appoints a general agent, he is bound by all his acts, but that when he appoints a special agent he is bound only to the extent of the authority which he has in fact given (*k*). But this distinction does not bring out the fact that, when a person appears to be a general agent, the master is bound by his acts and is estopped from denying his authority; that the important point is not what the agent's powers are, but what they seem to be; and that, notwithstanding an arrangement to the contrary, it will be assumed that he has usual authority. If, however, a person dealing with a servant knows that he has a special or limited authority, he is bound to see that the authority is observed.

A servant may have authority from the course of previous dealings to bind his master; if they would naturally lead tradesmen and other persons to believe that a servant is authorised to pledge his master's credit, the latter will be liable. A private arrangement between them forbidding buying on credit, or attaching conditions to doing so, will be no defence. In the case of a groom, who took his master's horses to a smith and farrier to be shod and to be doctored, Lord Kenyon ruled that it was no defence to an action

Helycar v. *Hawke* (1803), 5 Esp. 71; *Miller* v. *Lawton*, 15 C. B. N. S. 834.

(*g*) *Hawtayne* v. *Bourne* (1841), 7 M. & W. 595.

(*h*) *Myers* v. *Willis* (1855), 17 C. B. 77; 18 C. B. 886; *Sandemann* v. *Scurr* (1866), L. R. 2 Q. B. 86.

(*i*) *Reynolds* v. *Cox* (1865), 34 L. J. Q. B. 251.

(*k*) Lord Kenyon in *East India Co.* v. *Hensley* (1794), 1 Esp. 112; Ashurst, J., in *Fenn* v. *Harrison* (1790), 3 T. R. 760; Story on Agency sec. 126.

against the master that he had made a special arrangement with his groom by which for a year the groom was to keep his master's horses properly shod and to furnish them with medicine (*l*). On the other hand, if a servant chooses to go to a tradesman with whom there have been no previous dealings—if, for example, as was the case in *Hiscox* v. *Greenwood* (*m*), a coachman sends, without his master's knowledge, a chaise to a coachmaker who had never been before employed—the master incurs no liability. A common example of this principle occurs when a servant is allowed to make repeatedly purchases on credit. Tradesmen dealing with him are entitled to assume that he has in these circumstances authority to do that which he usually does with the knowledge or permission of his master, in the absence of notice that his authority is limited, or has been withdrawn. Accordingly, if a servant who usually buys for his master on credit, appropriates to his own use things which have been so bought, the master is liable. On the other hand, if the servant is always in cash beforehand to pay for goods, the master is not liable if the servant misappropriates the money or the goods (*n*). "Nothing," said Lord Kenyon, in *Stubbing* v. *Hentz* (*o*), "could be clearer than that where a man gives his servant money to pay for commodities as he buys them, if the servant pockets the money, the master will not be liable to pay it over again."

To rebut the presumption of authority raised by a previous course of dealings, it must be shown that notice was given of the intention to make a change. The cases seem to show that notice to a servant of a tradesman will not suffice. In *Gratland* v. *Freeman* (*p*) it appeared that the defendant was in the habit of dealing with the plaintiff, a publican, on credit. He paid his bill and then gave notice to the plaintiff's servant that he would run up

(*l*) *Precious* v. *Abel* (1795), 1 Esp. 350.
(*m*) (1802), 4 Esp. 174.
(*n*) *Rusby* v. *Scarlett* (1803), 5 Esp. 76.
(*o*) (1791), 1 Peake, N. P. 66.
(*p*) (1799), 3 Esp. 85.

no more bills, but only pay for beer as it came. Lord Eldon ruled that the defendant must show that the plaintiff had notice of this change in the manner of dealing, and that notice to the servant alone would not be sufficient.

Even if there have been no previous dealings, the master's conduct may amount to a representation that the servant has authority to contract in his name. Thus, when a coachman with whom his master had a private arrangement that he was to provide horses, went to a stable keeper in his master's livery and ordered horses, the master was liable. Littledale, J., in directing the jury, said "If he (the servant) made the contract in his own name, and represented to the plaintiff the agreement between himself and the master, of course under such circumstances the plaintiff cannot recover. But if he made no such representation of any agreement between himself and his master, I think that, by the master's sending him forth into the world wearing his livery, to hire horses which he (the master) afterwards uses, knowing of whom they were hired, and yet not sending to ascertain if his credit had been pledged for them, an implied authority is given, and the master is bound to pay the hire" (*q*).

A master will render himself liable if he ratifies the acts of his servant. Ratification may take place in many ways. If the servant orders goods in his master's name, and the latter uses them, knowing or having grounds for believing that they have been so ordered, he will be held to have ratified his servant's act. If he ratify a contract concluded by his servant, he will ratify it altogether. Thus if he receive the price of a horse sold by his servant, he will be bound by a warranty which the servant may have given in selling it (*r*).

It is often a difficult question, especially when contracts are made orally, to determine whether a master or a servant has been, in fact, trusted. If the servant did not act as

(*q*) *Rimell* v. *Sampayo* (1824), 1 C. & P. 254.

(*r*) *Bristowe* v. *Whitmore*, 4 L. T. N. S. 622.

his master's agent—if he either expressly or by implication contracted on his own behalf—the master is not liable (*s*).

Has a servant power to pledge his master's credit after he quits his employment? This is a mixed question of law and fact, and depends upon whether his master still in any way holds the servant out to the world as his agent. With reference to a servant, who had been in the habit of drawing bills of exchange in his master's name, and who was discharged, Holt, C. J., said, "If he draw a bill in so little time after that the world cannot take notice of his being out of service, the bill, in these cases, shall bind the master" (*t*). In a Nisi Prius case (*u*), Pollock, C. B., ruled that a gentleman was liable for corn ordered in his name by a livery stable keeper, H., who had been his coachman, who used to order corn, &c., of the plaintiff, and who continued to wear his livery. The defendant did not give notice to the plaintiff that H. was no longer in his service. It seems that an account was sent to the defendant; but he did not then give any notice to the plaintiff, who continued to supply corn on H.'s orders.

In some cases both master and servant will be bound. This will happen when a servant contracts as the agent of his master without naming his master, according to a well-known rule of law, that an undisclosed principal or his agent may be sued (*y*).

(*s*) *Williamson* v. *Barton* (1862), 7 H. & N. 899; 31 L. J. Ex. 170; 5 L. T. N. S. 800.

(*t*) *Anon.* v. *Harrison* (1699), 12 Mod. 346. In *Stavely* v. *Uzielli* (1860), 2 F. & F. 30, Erle, C. J., ruled thus: "Although the law is clear that the master who has once held out a servant as having authority to contract on credit must withdraw that authority by notice, not to the servant, but to the tradesman, and that it is not enough to do so merely by notice to the servant; yet there is much more than that in this case, and there may be notice by other means than express or actual notice. And here you have the fact that no accounts were sent in, even to the servant (and none to the master), for four years before the servant's death; and no accounts sent in until after his death, and the plaintiff's removal."

(*u*) *Aste* v. *Montague* (1858), 1 F. & F. 264.

(*y*) 2 Sm. L. C. 8th ed. 360.

APPENDIX A.

Authority.

Nickson v. *Brohan* (1713), 10 Mod. 109; master sent a clerk who had the general management of his cash concerns with a note to a banker to receive money or bank bills, and the servant got another person to give him for the note a draft upon the banker. The banker failed before the draft was presented: the master liable on the ground that a servant, by transacting affairs for his master thereby derives a general authority and credit from him.

Hazard v. *Treadwell* (1722), 1 Str. 506. Master sent waterman to plaintiff to buy iron on credit, and paid for it afterwards; sent the same waterman a second time with money; the waterman received the goods, but did not pay the money.

Helyear v. *Hawke* (1803), 5 Esp. 71. Person not a horse-dealer sent his servant to *Tattersall's* with horse for sale, with instructions to warrant sound; servant warranted free from vice; "servant entrusted to do all that he can to effectuate the sale." Ellenborough, C.J. See, however, *Brady* v. *Todd*, and *Woodin* v. *Burford* (1834), 2 Cr. & M. 391.

Barrett v. *Deere* (1823), Mood. & Malk. 200. Payment to a person in a merchant's counting-house, who appears to be entrusted with the conduct of business there, good payment to the merchant though it turned out the person was never so employed by him. Tenterden, C. J.

Rimell v. *Sampayo* (1824), 1 C. & P. 254. p. 248.

Miller v. *Hamilton* (1832), 5 C. & P. 433. Baker delivered bread from week to week. He was paid many sums by housekeeper and receipted weekly bills for a date

No Authority.

Stubbing v. *Heintz* (1791), Peake's N. P. 66. Master gave successive servants money to pay the bills once a week; one servant did not pay the bills but bought meat on credit for herself. Master not liable.

Pearce v. *Rogers* (1800), 3 Esp. 214. Plaintiff sued for price of beer supplied to defendant's family. Defendant dealt with plaintiff for porter used by his family, and was in the habit of paying ready money.

Hiscox v. *Greenwood* (1802), 4 Esp. 174. *See* p. 247.

Maunder v. *Conyers* (1817), 2 Stark. 281. A master not responsible for liquors ordered by his butler in the name of his master without authority, unless he has been in the habit of paying for goods ordered by the butler. Ellenborough, C. J.

Waters v. *Brogden* (1827), 1 Y. & J. 457. Cheque given by B. to his bailiff to give to C., in whose favour it was drawn; no authority in bailiff to discount the cheque with A.

Sanderson v. *Bell* (1834), 2 Cr. & M. 304. *Semble*, payment to an apprentice in master's counting-house not in the usual course of business is not a good payment to the master.

Hunter v. *Berkeley* (1836) 7 C. & P. 413. A. ordered of B. two suits of livery a year for her coachman. At the request of the coachman, B. supplied plain clothes instead of one of the suits; B. could recover only for livery supplied.

Accy v. *Fernie* (1840), 7 M. & W. 151. Payment to country agent of insurance company after period for payment; no authority to vary time of payment.

Metcalfe v. *Lumsden* (1844), 1 C. & K. 309. An authority to a

Authority.	No Authority.
after the time for which housekeeper paid him; defendant liable, as he did not prove he had given to housekeeper money to pay.	servant, a common drover, to sell in market overt; not general authority to sell elsewhere.—Rolfe, B.
Smith v. *Hull Glass Co.* (1852), 11 C. B. 897. Defendants liable for goods supplied to them on the orders of manager, appointed to superintend and transact, under the control of the directors, the manufacturing business of the company, "although no express delegation of authority." So *Totterdell* v. *Fareham Blue Brick Co.* (1866), 35 L. J. C. P. 278; *Geake* v. *Jackson* (1867), 36 L. J. C. P. 108.	*Cox* v. *Midland Ry. Co.* (1849), 3 Ex. 268. Defendants not liable for surgical attendance on injured passengers ordered by station-master. But query. To same effect, *Montgomery* v. *North British Ry. Co.* (1878), 5 R. 796.
Summers v. *Solomon* (1857), 7 E. & B. 879. Defendant, who resided near London, had a jeweller's shop at Lewes managed by A., who gave orders at Lewes for articles to be sent to the shop. Plaintiff, who resided in London, sent articles by A.'s orders to Lewes. A. ran away from Lewes, came to London, verbally ordered articles of jewellery, and took them away, telling plaintiff he was going to take them to Lewes. Plaintiff had no notice of withdrawal of agency. Held, that there was evidence upon which the jury might find A. to be defendant's general manager. But see 3 H. & N. 794.	
Smith v. *McGuire* (1858), 3 H. & N. 561; 27 L. J. Ex. 465. Defendant liable on charter-party signed by person whom he had left in charge of his business, although that person signed "per pro," and had received special instructions, which he exceeded.	
Howard v. *Sheward* (1866), 12 Jur. N. S. 1015; 36 L. J. C. P. 42; L. R. 2 C. P. 148. p. 245.	
Walker v. *Great Western Ry Co.* (1867), L. R. 2 Ex. 228; 36 L. J. Ex. 123; 16 L. T. N. S. 327. Defendants liable for services of surgeon employed by their general manager to perform an operation	

Authority.	No Authority.
on a servant injured by an accident.	
Langan v. *Great Western Ry. Co.* (1874), 30 L. T. N. S. 173, Ex. Ch., affirming 26 L. T. N. S. 577; p. 245.	
Beer v. *London & Paris Hotel Co.* (1875), L. R. 20 Eq. 412. Secretary of company authorised agent to execute contract of sale, both within Statute of Frauds and Companies Act, 1867.	
As to servant's authority to give receipts, *Thorold* v. *Smith* (1700), 11 Mod. 87; *Bridges* v. *Garrett* (1869), 38 L. J. C. P. 242; and *Coleman* v. *Riches* (1855), 16 C. B. 104. As to tender to servant being equivalent to tender to master, *Moffatt* v. *Parsons* (1814), 5 Taunt. 307; and *Wilmott* v. *Smith* (1828), Mood. & Malk. 238. As to admissions by servants, *Garth* v. *Howard* (1832), 8 Bing. 451; and *Great Western Ry. Co.* v. *Willis* (1865), 34 L. J. Ch. 195.	

CHAPTER XXVII.

SERVANTS' LIABILITY TO THIRD PERSONS.

SERVANTS incur no liability on contracts made through them if they contract as their masters' agents.

Servants are subject to the ordinary liabilities of agents. They are not liable if they contract as agents, but if they contract as principals—if they pledge their own credit, if they exceed their authority, or if they contract without authority, they are personally answerable (*a*). If, in entering into a contract, a servant do not disclose the fact that he is acting for his master, those with whom he deals may sue either him or his master. To whom credit was given will be a question for a jury if the servant be sued (*b*). The settled principle is that "persons who induce others to act on the supposition that they have authority to enter into a binding contract on behalf of third persons, on it turning out that they have no such authority, may be sued for damages for the breach of an implied warranty of authority" (*c*).

(*a*) *Cherry* v. *Bank of Australasia* (1869), 38 L. J. P. C. 49; 17 W. R. 1031; Story on Agency, sec. 264.

(*b*) *Fisher* v. *Marsh*, 34 L. J. Q. B. 177.

(*c*) Cockburn, C.J. in *Richardson* v. *Williamson* (1871), L. R. 6 Q. B. p. 279, and 40 L. J. Q. B. 145, referring to *Collen* v. *Wright*, 7 E. & B. 301; 26 L. J. Q. B. 47; 8 E. & B. 647; 27 L. J. Q. B. 215; *Downman* v. *Jones*, 9 Jur. (1845), 454. Apparently, according to the authorities, a servant would be responsible when he entered into a contract under the belief, *bonâ fide* but erroneous, that he had authority; *Randell* v. *Trimen* (1856), 18 C. B. 786; 25 L. J. C. P. 307; *Smout* v. *Ilbury* (1842), 10 M. & W. 1; *Kelner* v. *Baxter* (1866), L. R. 2 C. P. 174.

Torts.

A servant is not liable to third persons for negligence or acts of non-feasance or omission, but he is liable for acts of misfeasance.

This distinction has been established since 1701, when it was stated by Holt, C. J., in *Lane* v. *Cotton* (*d*). It has been justified on various grounds. Thus, it is said that it is a consequence of the fact that there is no privity between the servant and the party injured. "In respect to non-feasances, or mere neglects in the performance of duty, the responsibility must therefore arise from some express or implied obligation between particular parties standing in privity of law or contract with each other, and no man is bound to answer for any such violations of duty or obligation except to those to whom he has become directly bound or amenable for his conduct" (*e*).

When a servant sold goods wrongfully or, in other words, was guilty of conversion, he was held liable as a tort feasor, and he was not excused because he disposed of them for his

(*d*) 12 Mod. 488. The exact limits of the doctrine are hard to define, and the authorities are not at one. Mr. Wood thus states the rule recognised in America at p. 674 of his "Law of Master and Servant": "The servant is never liable to third persons for his failure to perform his master's obligations; but for his own wrongful or negligent acts he is liable to third persons injured thereby, either alone or jointly with his master." Mr. Wharton, on the other hand, states that the servant is not liable where there is negligence, but is so when malice exists. Story thus states the rule: "The agent is also personally liable to third persons for his own misfeasances and positive wrongs; but he is not in general (for there are exceptions) liable to third persons for his own nonfeasance or omissions of duty in the course of his employment." A servant keeping the key of a room in which he knows a man is imprisoned, is said to be a trespasser; Bro. Abrd. "Trespass," 133, 256. The true distinction is perhaps not between misfeasance and nonfeasance, but between duties arising solely out of contracts, and duties which the law will imply, independently of any contract. See *Dickson* v. *Reuter's Telegraph Co.* (1877), L. R. 2 C. P. D. 602; 46 L. J. C. P. 197; 35 L. T. 842; L. R. 3 C. P. D. 1; 47 L. J. C. P. 1; 37 L. T. 370; *Alton* v. *Midland Ry. Co.* (1865), 19 C. B. N. S. 213; 34 L. J. C. P. 292; and *Playford* v. *United Kingdom Electric Telegraph Co.*, L. R. 4 Q. B. 706.

(*e*) Story on Agency, sec. 309.

master's use (*h*). So, too, a servant was held guilty of conversion of certain goods in the following circumstances: the goods of a bankrupt were sent after bankruptcy to the defendant, a clerk in the employment of one Heathcote, and the defendant delivered them to Heathcote. The clerk, it was held, was guilty of conversion, though he acted from unavoidable ignorance, and for his master's benefit (*i*). On the other hand, refusal by a servant of an insurance company to deliver up to the plaintiff goods, the property of the plaintiff, in a warehouse, of which the servant kept the keys, was not conversion (*k*).

It has been already stated that a servant who executes unlawful orders will be liable. Individual expressions to the contrary in old reports cannot be regarded as law (*l*).

"Can it be maintained as a proposition of law," said Westbury, L. C., in *Cullen* v. *Thompson's trustees* (*m*), "that a servant who knowingly joins with and assists his master in the commission of a fraud, is not civilly responsible for the consequences? All persons directly concerned in the commission of a fraud are to be treated as principals. No party can be permitted to excuse himself on the ground

(*h*) *Perkins* v. *Smith* (1752), Sayer, 40.

(*i*) *Cary* v. *Webster* (1716), 1 Stra. 480. An action against a clerk by a person who had paid him money; the defendant had paid it over to his employer, but did not make further entry; no action. But if he had not paid it over, the plaintiff would have had his option either to charge him or the company. "A conclusion no doubt correct, whatever may be thought of the reason that the plaintiff 'may charge' the servant, because till the money is paid over, the servant receives it to his use." *Stephens* v. *Elwall* (1815), 4 M. & S. 259; *Cranch* v. *White* (1835), 1 Scott, 314. What would be conversion in a principal may not be such in a servant. See *Mires* v. *Solebay*, 2 Mod. 245; *Alexander* v. *Southey* (1821), 5 B. & Ald. 247; and *Lee* v. *Bayes* (1856), 18 C. B. 607. In the last mentioned case, Jervis, C.J., observed: "As between master and servant, or perhaps as between principal and agent, where the servant or agent receives from his master or his principal goods, which belong to a third person, on their being demanded of him by such third person, he is entitled to say: 'I received them from my master or my principal; and I require a reasonable time to ascertain whether the party making the demand is the real owner;' and such qualified refusal would not be evidence of a conversion, so as to render him liable."

(*k*) *Alexander* v. *Southey* (1821), 5 B. & Ald. 247.

(*l*) Story on Agency, sec 310.

(*m*) (1862), 4 Macq. 424; *R.* v. *Mutters* (1865). 34 L. J. M. C. 54.

that he acted as the servant of another; and the reason is plain, for the contract of agency or of service cannot impose any obligation on the agent or servant to commit or assist in committing a fraud."

In *Mill* v. *Hawke* (*n*), it was held that a surveyor required by statute to obey the orders of a highway board was liable for trespasses committed in the course of obeying the orders of the Board. So, too, it is said that if a clerk of works who superintends the erection of buildings give directions which result in the darkening of ancient lights, he will be liable (*o*).

It is laid down in an American case (*p*) that one servant cannot maintain an action against another for negligence, while they are engaged in a common employment; and in *Southcote* v. *Stanley* (*q*), there is a dictum by Pollock, C. B., to the same effect. But the reasoning upon which this decision proceeds is open to question, and has never been acted upon in this country.

A master who suffers damage by reason of his servant's negligence or misconduct may, of course, bring an action against him (*r*).

(*n*) (1875), L. R. 10 Ex. 92; 44 L. J. Ex. 49.

(*o*) *Wilson* v. *Peto* (1821), 6 Moor. 43. Compare *Stone* v. *Cartwright* (1795), 6 T. R. 411.

(*p*) *Albro* v. *Jaquith* (1855), 4 Gray, 99; Wood, 675.

(*q*) (1856), 1 H. & N. 250. See *Wright* v. *Roxburgh* (1864), 2 M. 748, where the contrary was decided.

(*r*) *Countess of Salop* v. *Crompton* (1600), Croke, Eliz. 757 (action of trespass against shepherd, who killed sheep intrusted to his charge); *Hussey* v. *Pacy* (1666), 1 Lev. 189 (a servant who knowingly caused his master to break a certain covenant, liable to an action on the case); *Savage* v. *Walthew* (1706), 11 Mod. 135; Story on Agency, sec. 310.

CHAPTER XXVIII.

LIABILITY OF A MASTER TO THIRD PERSONS FOR THE ACTS OF HIS SERVANTS.

A MASTER is liable to third person for his servant's tortious acts in the course of his employment.

The principle is expressed in the authorities in many ways. For example, it is said, "the master is answerable for the act of his servant, if done by his command, either expressly given or implied" (*a*); a statement of the law which is open to exception, because, as will be seen, a master may be responsible for acts done contrary to his commands. Sometimes it is said, "the law casts upon the master a liability for the act of his servant in the course of his employment" (*b*), or the master is "considered as bound to guarantee third persons against all hurt arising from the carelessness of himself, or of those acting under his orders, in the course of his business" (*c*). Masters, it is also said, are liable for the conduct of their servants when "acting within the scope of their authority or the normal duties of their employment" (*d*); when "actually engaged on their master's business" (*e*), or when acting "as their agents" (*f*), "with their master's authority, and upon their

(*a*) Blackstone, 1 Com. 417.

(*b*) Willes, J., in *Limpus* v. *General Omnibus Co.* (1862), 1 H. & C. 539.

(*c*) Lord Cranworth, in *Bartonshill Coal Co.* v. *Reid* (1858), 3 Macq. 283; *Burns* v. *Poulson* (1873), L. R. 8 C. P. 563.

(*d*) *Stevens* v. *Woodward* (1881), 50 L. J. Q. B. 231.

(*e*) Willes, J., in *Patten* v. *Rea* (1857), 2 C. B. N. S. 607.

(*f*) Williams, J., ditto.

business" (*g*); "for negligences and omissions of duty of their servant, in all cases within the scope of his employment" (*h*), "in the ordinary course of business" (*i*), "in the course of the exercise of their duties" (*k*), "in the course of the service and for his (the master's) benefit" (*l*), in the master's business and "within the scope of the probable authority which must be supposed to be given to the servant" (*m*), "within the scope of the power or confidence reposed in the servant" (*n*), or "in the particular or general employment of a servant" (*o*). All of these expressions are somewhat ambiguous, though they have been elucidated in a long series of decisions. They are various modes of expressing the fact that, in the case of masters of servants, the maxim, *culpa tenet suos auctores*, does not hold good; that there is an exception to the general rule, that no one is responsible for any conduct but his own; and that masters are answerable to third parties or strangers for the acts of their servants when engaged in or about their business (*p*).

This liability is not confined to acts of negligence, though they are the torts for which masters are most frequently held responsible. The liability extends to all other torts—for example, to fraud—if committed within the scope of a servant's duties.

The rule which is now established is, to quote the words of Willes, J., in *Barwick* v. *The English Joint-Stock Bank* (*q*)—an action against a bank for fraudulent misrepresentation on the part of its manager—"that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though

(*g*) Cockburn, C.J., in *Patten* v. *Rea* (1857), 2 C. B. N. S. 607.

(*h*) Story on Agency, s. 423.

(*i*) *Edwards* v. *London and North-Western Ry. Co.* (1870), L. R. 5 C. P. 445.

(*k*) *Walker* v. *South-Western Ry. Co.* (1870), L. R. 5 C. P. 640.

(*l*) Willes, J., in *Barwick* v. *English Joint Stock Bank* (1867), L. R. 2 Ex. 259.

(*m*) Bayley, J., in *A.-G.* v. *Siddon* (1830), 1 Tyr. 41.

(*n*) *Mechanics Bank* v. *The Bank of Columbia*, 5 Wheaton, 326.

(*o*) *Mackenzie* v. *MacLeod* (1834), 10 Bing. 385.

(*p*) See Appendix B. as to reasons for the rule.

(*q*) (1867). L. R. 2 Ex. 259.

no express command or privity of the master be proved." This statement of the law has not been universally or readily acquiesced in. Several judges have been reluctant to admit that it is true of certain torts, and in particular of fraud. Why should A. be responsible for the false statements of B. which he never in fact authorised, and which may be contrary to his wishes? Fraud without any fraudulent mind in the person who is made answerable for it, seems nonsensical. "I do not understand legal fraud," said Bramwell, L. J., in *Weir* v. *Bell* (*r*); "to my mind it has no more meaning than legal heat or legal cold, legal light or legal shade." It is, however, too late to question the doctrine stated in *Barwick* v. *English Joint-Stock Bank*. It is in accordance with a long series of decisions beginning with *Hern* v. *Nichols* (*s*). Mr. Justice Willes's statement of the law has frequently been cited with approval (*t*); and it has been acted upon more than once by the House of Lords and the Privy Council (*u*). The doctrine may rest upon a fiction; but if so, it is a fiction in accordance with others which are well recognised—the doctrine, for example, that notice to the agent may be notice to the principal, and that a servant's knowledge may sometimes be treated as the master's (*x*). It is as easy to admit that A., though morally innocent, is legally guilty of fraud through his servant or agent, as it is to admit that A. has been negligent through his servants, when in point of fact he has not been wanting in prudence, and when they have done in their folly that which he in his wisdom forbade.

The rule just stated applies to corporations or companies.

(*r*) (1877), L. R. 3 Ex. D. 238.

(*s*) (1701), 1 Salk. 289.

(*t*) *Mackay* v. *Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394; *Swift* v. *Winterbotham* (1873), L. R. 8 Q. B. 244.

(*u*) *Bank of New South Wales* v. *Owston* (1879), L. R. 4 Ap. 270; and *Houldsworth* v. *City of Glasgow Bank* (1880), L. R. 5 Ap. 317.

(*x*) *Baldwin* v. *Cassella* (1872), L. R. 7 Ex. 325; *Stiles* v. *Cardiff Steam Navigation Co.* (1864), 33 L. J. Q. B. 310; 10 L. T. N. S. 844; 12 W. R. 1080; 10 Jur. N. S. 1199. In his criticism of the judgment in *Barwick* v. *The English Joint-Stock Bank*, Bramwell, L.J., suggests as "the true ground," "that every person who authorises another to act for him in the making of any contract, undertakes for the absence of fraud in the execution of the authority given."

It extends to companies or corporations—such as Dock Trusts—entrusted by the State with the performance of certain duties, although the revenues are not appropriated to the use of the individual corporators, or to that of the corporation itself (*y*). Companies have been held responsible for creating a nuisance, such as obstructing a highway (*z*); for publishing by telegram a libel (*a*); for wrongful arrests or malicious prosecutions (*b*); for wrongful detaining bank notes (*c*); for wrongful assault by their servant (*e*); for reckless driving (*f*); and for infringing a patent (*g*).

There was a reluctance, especially in the Chancery Courts, to impute to companies the frauds of their directors or servants. How could directors, it was asked, be the agents of the company, their employer, to cheat or deceive? In *Re North of England Joint-Stock Banking Company, ex parte Bernard* (*h*), Parker, V.-C., said that they could not be the company's agents for that purpose. So in *Dodgson's Case* (*i*), Knight-Bruce, V.-C., said, that "whatever fraud there may be, if fraud there be, it is charged against the directors, who cannot be the agents of the body of shareholders to commit a fraud." Similar expressions were used by Page Wood, V.-C., in *Re Athenæum Assurance Company* (*k*); Romilly, M.R., in *Duranty's Case* (*l*); Lord Chelmsford in *Re Hull and London Life Assurance Company* (*m*). In the *Western Bank of Scotland* v. *Addie* (*n*), decided in 1867, Lord Cranworth said, "An attentive consideration of the cases has

(*y*) *Mersey Dock Trustees* v. *Gibbs* (1866), L. R. 1 H. of L. 93.

(*z*) *R.* v. *Great North of England Ry. Co.* (1846), 9 Q. B. 315.

(*a*) *Whitfield* v. *South-Eastern Ry. Co.* (1858), E. B. & E. 115; 27 L. J. Q. B. 229. See also *R.* v. *City of London*, cited in note to *Whitfield* v. *South-Eastern Ry. Co.*

(*b*) *Edwards* v. *Midland Ry. Co.* (1880), L. R. 6 Q. B. D. 287.

(*c*) *Yarborough* v. *Bank of England* (1812), 16 East, 6.

(*e*) *Eastern Counties Ry. Co.* v. *Broom* (1851), 6 Ex. 314; *Bayley* v. *Manchester Ry. Co.* (1873), L. R. 8 C. P. 148.

(*f*) *Green* v. *London General Omnibus Co.* (1859), 7 C. B. N. S. 290.

(*g*) *Betts* v. *De Vitre* (1868), L. R. 3 Ch. 429.

(*h*) (1852) 5 De G. & Sm. 283; 21 L. J. Ch. 468.

(*i*) (1849), 3 De G. & Sm. 85.

(*k*) (1859), John. 451.

(*l*) (1858) 26 Beav. 268

(*m*) (1858), 2 De G. & J. 275.

(*n*) L. R. 1 S. & D. 145.

convinced me that the true principle is, that these large corporate bodies, through whose agencies so large a portion of the business of the country is now carried on, may be made responsible for the frauds of those agents to the extent to which the companies have profited from those frauds; but that they cannot be sued as wrong-doers, by imputing to them the misconduct of those whom they have employed."

In Common Law pleading the fraud of the agent was treated by a sort of fiction as the fraud of the principal. Courts of Common Law were therefore more disposed to entertain the view that a company might be sued for its servants' or agents' fraud. Courts of Equity were familiar with the doctrine that a principal, though innocent, might suffer for the fraud of an agent to the extent to which he was benefited thereby (*o*). They were, therefore, disposed to confine the liability of companies for the fraudulent representations of directors to those cases in which the former were benefited. It is submitted that the words cited above from the judgment of Willes, J., express the true rule. Strange though it may seem to attribute malice, fraud, or an intention of any kind to a corporation, practical exigencies have required the law to be moulded so as to meet the development of joint-stock enterprise. Not finding a remedy to hand, the Courts have made one (*o*).

(*o*) See remarks of Selborne, L. C., in *Houldsworth* v. *City of Glasgow Bank* (1880), L. R. 5 Ap. 326; Lord Westbury in *Conybeare* v. *New Brunswick Ry. Co.* (1862), 9 H. of L. C. 725; Sir Montague Smith in *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. 411. It was once doubtful whether any action for trespass lay against a corporation, Kyd. 1, 223. In trespass, *capias* and *exigent* are the proper processes. How, it was argued, could they be employed against a corporation? Similarly Holt, C.J., laid it down that a corporation was not indictable, 12 Mod. 559. The contrary is now clear; *R* v. *Great North of England Ry. Co.* (1846), 9 Q. B. 314; *R.* v. *Scott* (1842), 3 Q. B. 547. Some judges in modern times have adhered to the old doctrine in regard to acts which appeared to imply malice, *e.g.*, Alderson, B., in *Stevens* v. *Midland Counties Ry. Co.* (1854), 10 Ex. 352. See, however, *Henderson* v. *Midland Ry. Co.* (1871), 20 W. R. 23; *Edwards* v. *Midland Ry. Co.* (1881), L. R. 6 Q. B. D. 27; *Whitfield* v. *South-Eastern Ry. Co.* (1858), E. B. & E. 122; *Green* v. *London General Omnibus Co.* (1859), 7 C. B. N. S. 290. The fact is that the law has been altered, and that various fictions have been resorted to in order to conceal

One who employs a contractor to execute a work incurs no liability (except in the cases mentioned below) for the acts of the contractor, or sub-contractor, or his servants.

This principle has been at length firmly established. But it was not at once adopted. There was for a long time a disposition to extend the liability of persons who set on foot or ordered the execution of works to the negligent or other tortious acts of contractors. It was not until after much discussion that the doctrine which is now recognised was adopted. Thus it was supposed that owners of fixed property, as distinguished from movable chattels, were liable for acts done thereon, even though not done by their servants. It was thought to be highly convenient that the owner of a house or other real property should be responsible for all injuries done in the course of work on his property or for his benefit (*p*). Persons who employed contractors were in some of the early cases made responsible for the acts of the latter; bailors answered for bailees. Now, however, it is well settled, subject to the exceptions hereafter stated, that an employer is not answerable for the conduct of a contractor, a sub-contractor, and their servants; and the only difficulty is in distinguishing in practice contractors from servants.

The defendants in *Peachey* v. *Rowland* (*q*), entered with two

the change. As an instance of such fictions, the following may be cited: "A railroad corporation is to be regarded as constructively present in all acts performed by its agents and servants within the range of the ordinary employments." Wharton on Negligence, s. 158. It is not every fraud of a servant or agent for which a master or principal will be answerable. See *Giles* v. *Norway*; *Burnes* v. *Pennell* (1849), 2 H. of L. 497; *Coleman* v. *Riches* (1855), 16 C. B. 104; 1 Jur. N. S. 376; 24 L. J. C. P. 125. Almost all the authorities are collected in the argument in *Houldsworth* v. *City of Glasgow Bank* (1880), L. R. 5 Ap. 317.

(*p*) *Bush* v. *Steinman* (1799), 1 B. & P. 404. (A. who had a house by the wayside, engaged B. to repair it. B. contracted with C., and C. with D. to furnish the materials. The servant of D. placed a quantity of lime on the road, whereby plaintiff was injured. A. held answerable on the ground according to Eyre, C.J., stated above. This case was questioned in *Gayford* v. *Nicholls* (1854), 9 Ex. 702, and disapproved of in many other cases.

(*q*) (1853), 13 C. B. 182; 22 L. J. C. P. 81; 17 Jur. 764. No notice is taken in the judgment of the fact that one of the defendants saw the

contractors into a contract, by which they agreed to construct a drain in the road in connexion with the houses of the defendants. The contractors employed A. to excavate and fill in the work. A. did this negligently; and the plaintiff was thereby injured. Yet the defendants were not liable; A. not being the servant of the defendants, and the contractors having been employed by them to do a lawful work. So, too, in the leading case of *Reedie* v. *The London and North-Western Railway Company* (*r*). The defendants engaged a contractor to construct a portion of their railway, but reserved the right to the company to dismiss any incompetent workmen. Through the negligence of the workmen of the contractor, a stone fell upon the plaintiff's husband, who was passing under a bridge, and killed him. The company were exonerated from liability. In another case, *Rapson* v. *Cubitt* (*s*), the defendant, a builder, was employed by the committee of a club to do certain work, including the putting up of gas-fittings at a club-house. He made a sub-

improper manner in which the work was being done.

(*r*) (1849), 4 Ex. 244. See also *Knight* v. *Fox* (1850), 5 Ex. 721. (A. contracted with a railway company to complete a portion of their line. B. contracted with A. to erect a bridge. B. had in his service C., who acted as general servant of B., and as his surveyor. B. entered into a contract with C., by which the latter was to supply scaffolding for the bridge, the defendant, B., to provide the requisite materials and lights. One of the poles of the scaffolding improperly projected on the footway. In consequence of this, and owing to the want of sufficient light, D. was injured. No action by D. lay against B. The circumstance that C. was the general servant of B. did not the less make him a contractor in regard to the scaffolding.)

(*s*) (1842), 9 M. & W. 710. *Milligan* v. *Wedge* (1840), 12 A. & E. 737. (The defendant, a butcher, employed a licensed drover to drive a bullock from Smithfield. The drover employed a boy, and, by the negligence of the latter, the plaintiff's property was injured.) *Overton* v. *Freeman* (1852), 11 C. B. 867. (Defendants contracted with parish officers to pave certain streets, and entered into a sub-contract with W., who agreed to lay the curb-stone under the superintendence of the surveyor of the local commissioners. The stones were supplied by the defendants, and brought to the spot by them. Some of them were placed in the pathway by workmen employed and paid by W. Plaintiff injured by falling over the stones; the defendants not liable.) *Cuthbertson* v. *Parsons* (1852), 12 C. B. 304; *Steel* v. *South-Eastern Ry. Co.* (1855), 16 C. B. 550; *Brown* v. *Accrington Cotton Co.* (1865), 3 H. & C. 511; *Taylor* v. *Greenhaigh* (1874), L. R. 9 Q. B. 487; 43 L. J. Q. B. 168. For a clear statement of the law, see Bigelow, C.J., in *Sproul v. Hemmingway*, 14 Pick. Mass. 1.

contract with a gasfitter to execute this part of the work. An explosion of gas took place by reason of the carelessness of the latter, and the plaintiff was injured. Yet no action lay against the defendant.

A person who employs a contractor to do work which is necessarily unlawful is liable for the acts of the contractor.

In such a case the contractor's acts are really his employer's. The latter has done just what he was ordered to do, and that which was ordered was itself wrong. A gas company, for example, entered into a contract with W., to open trenches and lay their mains in the streets of Sheffield. W. employed men to do the work. They left a heap of work and stones in such a position that the plaintiff fell over them and was injured. The company were responsible inasmuch as they had no right to make excavations in the streets (*x*). Distinguishing the case from *Peachey* v. *Rowland* (*y*), *Overton* v. *Freeman* (*z*), and other cases in which employers of contractors were exonerated, Lord Campbell observed, "In these cases nothing was ordered except what the person giving the order had a right to order, and the contract was to do what was legal, and the employer was held properly not liable for what the contractor did negligently, the relation of master and servant not existing. But here the defendants employ a contractor to do that which was unlawful, and an act done in consequence of such employment is the cause of the injury for which the action is brought. It is simply the case of persons employing another to do an unlawful act, and a damage to the plaintiff from the doing of such unlawful act." Sometimes the distinction is put in

(*x*) *Ellis* v. *Sheffield Gas Co.* (1853), 23 L. J. N. S. Q. B. 42.
(*y*) (1853), 13 C. B. 182; 22 L. J. C. P. 81; 17 Jur. 764.
(*z*) See note (*s*).

another way. It is said that, when the act which was ordered caused the injury, the person who gave the order is liable. When the cause of action is something collateral, done in the course of the work, the responsibility rests with the contractor. If the contractor have done in an improper manner that which might well have been done in a proper manner, there is no redress against the person who set the contractor in motion. The owner of a house employed a builder to take down and reconstruct the front. The contractor removed a brest-summer inserted in a party-wall, without taking proper care to shore up the adjoining house. The employer was not bound to make good the damages. He had a right to suppose that the builder would take ordinary precautions (*a*).

A person who employs a contractor to execute work is liable for the nonperformance of duties which the former is bound at Common Law or by Statute to fulfil.

This is scarcely distinguishable from the last class of cases. At Common Law there is a duty incumbent upon persons not to have their house or premises in such a state as to be a nuisance or to be dangerous to passers by, and they will not be heard to say that they entrusted the performance of their duty to an independent contractor, and that they are not answerable for what has befallen travellers or passers by. This is illustrated by *Pickard* v. *Smith* (*b*). A passenger by a railway train fell into the coal-cellar of a refreshment room at a railway station; the servants of a coal merchant had been putting coals into the cellar and had negligently left the trap-door open and unguarded. The lessee and occupant of the refreshment room was held liable to the

(*a*) *Butler* v. *Hunter* (1862), 7 H. & N. 826; 31 L. J. Ex. 214; *Hole* v. *Sittingbourne Ry. Co.*, 2 E. & B. 767.

(*b*) (1861), 10 C. B. N. S. 470; 4 L. T. N. S. 470; and compare *Nisbett* v. *Dixon* (1852), 14 D. 973, and *Grant* v. *West Calder Oil Co.* (1872), 9 S. L. R. 254. *Pickard* v. *Smith* is sometimes quoted as if reaffirming the principle stated in *Bush* v. *Steinman*. It is submitted that the principle of the former in no way peculiarly refers to real property.

plaintiff on the ground that the employment of an independent contractor did not absolve him from the duty of taking reasonable precautions to prevent mischief from the opening of the trap-door. The duty was incumbent upon the lessee, and he was liable for its non-fulfilment. For similar reasons, one who is bound by statute to perform certain duties cannot shield himself from responsibility by employing a competent contractor. His duty is to do the particular thing which the Legislature ordered—not merely to do his best to perform it. A company was authorised by a private Act of Parliament to construct a bridge which opened, and it was bound by the Act not to detain vessels navigating the river longer than was required to allow carriages, &c., to cross. A vessel having been delayed for a longer period owing to a defect in the construction of the bridge, it was held to be no defence to an action against the company that it had employed a competent contractor (*c*).

A person who employs a contractor to do work which is lawful, but which is dangerous, and is likely in the natural course of things to cause injury, is liable, if injuries result therefrom.

This principle—which is really only an instance of the last—may be collected from *Bower* v. *Peate* (*d*), *Tarry* v.

(*c*) *Hole* v. *Sittingbourne Ry. Co.* (1861), 6 H. & N. 488 ; 30 L. J. Ex. 81. This is stated in some judgments to be in principle the same as *Ellis* v. *Sheffield Gas Co.*, already mentioned, but in the latter the contractor was employed to do what must have been a nuisance. See also *Gray* v. *Pullen* (1864), 5 B. & S. 971 ; 32 L. J. Q. B. 169 ; 34 L. J. Q. B. 265. (Defendants being empowered under a Local Management Act to make a drain, employed a contractor, who negligently executed the work ; held liable.) *Hyams* v. *Webster* (1867), 36 L. J. Q. B. 166 ; Wood on Master and Servant, 626.

(*d*) (1876), L. R. 1 Q. B. D. 321 ; 45 L. J. Q. B. 446. The resemblance between this case and *Butler* v. *Hunter*—which does not seem to have been referred to in the argument—is close. The final ground upon which the Court put their decision in *Bower* v. *Peate* was, "that a man who orders a work to be executed, from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief, and cannot

Ashton (*e*), *Angus* v. *Dalton* (*f*). In the first of these cases the plaintiff and the defendant were owners of two adjoining houses, and the plaintiff was entitled to the support for his house of the defendant's land. The defendant employed a contractor to pull down his house, excavate the foundations of it, and to rebuild it. The contractor undertook the risk of supporting the plaintiff's house, as far as might be necessary, during the work, and to make good any damage and satisfy any claims arising therefrom. The means taken by the contractor to support the house were insufficient; it was injured; and the defendant was held liable. These cases need not be taken to re-affirm the doctrine stated in *Bush* v. *Steinman* (*g*). They merely lay it down that no one can escape from the consequences of interfering with or endangering a neighbour's right of support or of ordering work dangerous to others by handing over the execution of it to a contractor.

relieve himself of his responsibility by employing someone else—whether it be the contractor employed to do the work from which the danger arises, or some independent person—to do what is necessary to prevent the act he has ordered to be done from becoming wrongful. There is an obvious difference between committing work to a contractor to be executed from which, if properly done, no injurious consequences can arise, and handing over to him work to be done from which mischievous consequences will arise unless preventive measures are adopted." All this seems applicable to *Butler* v. *Hunter*. See also *Percival* v. *Hughes* (1882), L. R. 9 Q. B. D. 441; 51 L. J. Q. B. 338; 46 L. T. N. S. 677. (Defendant, owner of a house adjoining to the house of plaintiff, employed a competent architect and contractor to rebuild former; the workmen of the contractor negligently and without the knowledge of the defendant, cut into a party wall to fix a staircase, whereby the plaintiff's house fell; defendant liable, though the contractors were competent, and though the fixing of the staircase was not in itself a hazardous operation. Holker, L. J., dissented). The majority of the judges of the Court of Appeal appear to put their decision on the ground that the fixing of the staircase was part of a hazardous operation; but, as Holker, L. J., pointed out, the hazardous part of the operation was over before the fixing of the staircase was commenced.

(*e*) (1876), L. R. 1 Q. B. D. 314; 45 L. J. Q. B. 260. (Defendant, lessee and occupier of a house; from the front of it projected a heavy lamp, which fell upon and injured the plaintiff. The defendant employed an experienced gas-fitter, through whose carelessness the lamp was loosened; held that the defendant was liable.)

(*f*) (1877), L. R. 3 Q. B. D. 85; 4 Q. B. D. 162; 6 Ap. 746.

(*g*) See note, p. 262.

A person who employs a contractor to execute work is liable for the wrongful acts of the contractor if the former controls and interferes with the execution of the work.

The case most frequently cited in illustration of this proposition is *Burgess* v. *Gray* (*h*), the facts of which were these :—A. employed B. to make a drain to communicate with the common sewer. B.'s servant left a heap of gravel on the highway, and the plaintiff was thereby injured. Before the accident, A. had been informed that the heap was dangerous, and had promised to remove it. It also appeared that B. had charged A. a certain rate per load for the removal of the gravel; in these circumstances the Court thought that there was evidence that A. had not abandoned the entire control of the work, and that he was consequently responsible to the plaintiff. In another case a person had hired for the day a carriage. According to the decision in *Laugher* v. *Pointer* (*i*), he would not be responsible for the acts of the

(*h*) (1845), 1 C. B. 578. See also *Blake* v. *Thirst* (1863), 2 H. & C. 20; 32 L. J. Ex. 188. (Defendant, a builder, contracted with local commissioners to make a sewer, and underlet to N. the excavation and the brickwork at a fixed price per yard; N. employed his own men, but defendant had the right of dismissing them. In consequence of N.'s negligence to provide a sufficient light, plaintiff fell into an unfenced track; held that defendant was liable. But see remarks of Martin, B.); *Stephen* v. *Thurso Police Commissioners* (1876), 3 R. 535; *Sadler* v. *Henlock* (1855), 4 E. & B. 570; 3 C. L. R. 760; 1 Jur. N. S. 677; 24 L. J. Q. B. 138.

(*i*) See p. 59; also *Shields* v. *Edinburgh and Glasgow Ry. Co.* (1856), 18 F. 1199. (Defendants provided cart, a contractor the horse and driver; defendants not liable.) In another Scotch case — *Stephen* v. *Thurso Police Commissioners* (1876), 3 R. at p. 542—Lord Gifford made the following remarks: "The test always is, 'Had the superior personal control or power over the acting or mode of acting of the subordinate?' I use the expression 'personal control,' because I think that this is always the turning point in such cases. Was there a control or direction of the person, in opposition to a mere right to object to the quality or description of the work done? . . It is sometimes said that the question is, whether the relation between the immediate wrong-doer and the defender is that of master and servant, or employer and contractor. But these words are a little ambiguous; and, though they may indicate generally the rule of law, the real question always is, I think, who had the control and direction of the person who did the wrong?"

postilions, who were the servants of the owner. But having interfered with them, he was held responsible (*k*).

Difference of opinion has arisen as to the precise position of drivers of cabs who are remunerated by their receipts over a certain fixed sum. The question whether they are the servants of the owners of cabs, or merely bailees, has already been dealt with. The point was first considered in *Morley* v. *Dunscombe* (*l*), and the Court there thought that the driver was a servant remunerated in a peculiar way. This view was also taken in *Powles* v. *Hider* (*m*), where it was held that having regard to the 1 & 2 Will. IV., c. 22, s. 20, and 6 & 7 Vict. c. 86, ss. 23, 24, 27 and 28, the driver was the servant of the owner, and that the latter was liable to third persons for the negligence of the former. When, however, the question arose in a different form in *Fowler* v. *Lock* (*n*), and *King* v. *Spurr* (*o*), the Courts did not take the view of the relation adopted in *Powles* v. *Hider*.

It has already been stated with reference to *Laugher* v. *Pointer*, that persons who hire a carriage and servant do not thereby become responsible for the acts of the servant; he remains the servant of the owner. In like manner the owners of ships have been held liable for the wrongful acts of their servants, even though at the time the injury was committed the vessel was chartered or hired by some other person. Thus in *Dalyell* v. *Tyrer* (*p*), the lessee of a ferry hired for a day a steam-tug with its crew from the defendants; the plaintiff, who was a passenger on board the tug, was injured by the breaking of a rope, owing to the

(*k*) *McLaughlin* v. *Pryor* (1842), 4 M. & G. 48; *Smith* v. *Lawrence* (1828), 2 M. & R. 1; *Brady* v. *Giles* (1835), 1 Mood. & Ro. 494. The last case cannot be regarded as a subsisting authority. See also *Randleson* v. *Murray* (1838), 8 A. & E. 109. (A warehouseman employed a master porter to remove a barrel from his warehouse; the master porter employed his own men and tackle, and, through the negligence of the men, the barrel fell and injured the plaintiff; held that the warehouseman was liable.) This case has often been questioned; *Murphey* v. *Caralli* (1864), 3 H. & C. 462.

(*l*) (1848), 11 L. T. 199.

(*m*) (1856), 6 E. & B. 207.

(*n*) (1872–74), L. R. 7 C. P. 272; 26 L. T. 476; 20 W. R. 672; 41 L. J. C. P. 99.

(*o*) (1881), L. R. 8 Q. B. 104.

(*p*) (1858), E. B. & E. 899; 28 L. J. Q. B. 52.

negligence of the crew in mooring the tug. It was held that the crew remained the servants of the defendants, and that they were answerable.

A person is not liable for the acts of those whom he has not chosen to serve him, and whose services he is bound by statute or otherwise to accept.

This is exemplified in regard to pilots. Ship-owners being compelled in certain circumstances to take them on board and give them the charge of their ships, are not made to suffer for a pilot's mistakes or carelessness (*q*). It is sometimes a question of difficulty to know when the employment of a pilot is imperative, but if a vessel be under the care of a compulsory pilot he is not regarded as the servant of the owner. Indeed, the 388th section of the Merchant Shipping Act of 1854, 17 & 18 Vict. c. 104, expressly declares that "no owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any district where the employment of such pilot is compulsory by law."

(*q*) *Lucey* v. *Ingram* (1840), 6 M. & W. 302. (Owner not liable when ship under conduct of a licensed pilot. This case turned chiefly on 6 Geo. IV., c. 125. "The master, however well qualified to conduct the ship himself, is bound, under a penalty, in a great measure to divest himself of its control, and to give up the charge to the pilot. As a necessary consequence the master and owners are exempted from responsibility for acts resulting from the mismanagement of the pilot.") *General Steam Navigation Co.* v. *British and Colonial Steam Navigation Co.* (1868), L. R. 3 Ex. 330; (1869), L. R. 4 Ex. 238. The main question here was, whether the employment of the pilot was compulsory at the spot where the collision took place. Martin, B., still intimated his view that at Common Law the owners would not be liable. See also *Ritchie* v. *Bowsfield* (1817), 7 Taunt. 309; *The Stettin* (1863), Br. & Lush. 199; *The Iona* (1867), L. R. 1 P. C. 426; *The Velasquez* (1867), L. R. 1 P. C. 494. Somewhat inconsistently, the owner has sometimes been regarded as liable for the contributory negligence of the pilot. See judgment of Lord Blackburn in *Spaight* v. *Tedcastle* (1881), L. R. 6 App. 217. It is to be observed that the exemption does not apply when the pilot has to be selected out of a limited class; *Martin* v. *Temperley* (1843), 4 Q. B. 298; and see also *The Guy Mannering* (1882), L. R. 7 P. D. 52 and 132, as to a case in which the pilot has not control of the navigation.

In like manner the captain of a man-of-war is not accountable for the acts of his officers (*r*). So, too, as explained in *Stone* v. *Cartwright* (*u*), a bailiff, steward, or manager is not liable for the acts of the servants whom he appoints.

In *Quarman* v. *Burnett* (*x*), it is observed by Parke, B., that "the liability by virtue of the principle of relation of master and servant must cease where the relation itself ceases to exist; and no other person than the master of such servant can be liable, on the simple ground that the servant is the servant of another, and his act the act of another; consequently, a third person entering into a contract with a master, which does not raise the relation of master and servant at all, is not thereby rendered liable." Such expressions, however, must not be understood to interfere with the general rule that principals are answerable for the acts of their agents within the scope of their employment. Thus litigants may be liable for the acts of their solicitors in the course of litigation (*y*), and merchants for the conduct of their factors or agents (*z*). The responsibility of masters is but an application of a general rule (*a*).

Masters are liable to third persons for the consequences of negligence in employing incompetent servants.

This question has usually arisen in actions brought by servants against masters when the defence of common employ-

(*r*) *Nicholson* v. *Mounsey* (1838), 15 East, 384; but see as to liability of master of a merchant-ship, who is for some purposes regarded as owner, Maude and Pollock, 4th Ed. i., 155; Story on Agency, sec. 317.

(*u*) (1795), 6 T. R. 411.

(*x*) (1840), 6 M. & W. 499, 509; *Stone* v. *Cartwright*, 6 T. R. 411.

(*y*) *Collett* v. *Foster* (1857), 2 H. & N. 356; and compare *Smith* v. *Keal* (1882), L. R. 9 Q. B. D. 340.

(*z*) *Grammar* v. *Nixon* (1725), 1 Str. 653; *Hern* v. *Nichols* (1701), 1 Salk. 289; on the other hand, *Lucas* v. *Mason* (1875), L. R. 10 Ex. 251.

(*a*) As to this point, see *Haseler* v. *Lemoyne* (1858), 28 L. J. C. P. 103; remarks of Bramwell, B., at p. 344, in *Udell* v. *Atherton* (1861), 30 L. J. Ex.; Lindley on Partnership, vol. i. 253; Wharton on Agency, sec. 19; Story on Agency, sec. 308, and Mr. Green's note to sec. 451. Probably the correct view is that the servant is one kind of agent, the extent of whose authority is to be inferred from the nature of his employment.

ment is in question. It may, however, arise otherwise; being liable to fellow workers who suffer from their negligence or recklessness in employing men who have no skill, masters are not less liable to strangers (*b*).

A master is liable for the acts of his servant done in execution of his express orders.

This liability is criminal as well as civil. The act which the master has ordered is for all purposes his. In an early case Mr. Justice Foster thus explained the criminal responsibility of a master, who orders his servant to do that which is unlawful. "A. biddeth his servant hire somebody, no matter whom, to murder B., and furnisheth him with money for that purpose; the servant procureth C., a person whom A. never saw nor heard of, to do it; is not A., who is manifestly the first mover or contriver of the murder, an accessory before the

(*b*) *Wilson* v. *Merry* (1868), L. R. 1 S. & D. 326. If a master negligently suffered a volunteer, who was incompetent to engage in his work, and some one was thereby injured, no doubt the master would be liable. In *Wanstall* v. *Pooley* (1841), 6 C. & F. 910, n., the Queen's Bench decided that a corn-factor, whose business was managed in his absence by his sister, was liable for the negligence of a tipsy servant, whom she had sent with corn to a customer. See also *Wheatley* v. *Patrick* (1837), 3 M. & W. 650. In his Leading Cases, p. 657, Mr. Bigelow observes that "a servant who merely hires labourers for the performance of the master's work is not in the situation of a sub-contractor, and cannot be held liable for damages caused by the negligence of such labourers." He thinks an action would lie against the master; Addison, Torts, 101 (5th ed.); *Stone* v. *Cartwright* (1795), 6 T. R. 411; *Wilson* v. *Peto* (1821), 6 Moore, C. P. 47. It has, in fact, been broadly laid down that, if a servant employs another person to do his work, or assist him therein, the master is liable for an injury resulting from such person's acts (Wood, 588). No doubt, in *Booth* v. *Mister* (1835), 7 C. & P. 66, Lord Abinger ruled in an action for injuries by the driver of a cart—the evidence being that the defendant's servant was in the cart, but that a person not his servant was driving—that it was the same as if the defendant's servant had driven. But he reserved the point, and it was never argued. In *Althorf* v. *Wolfe*, 8 Sm. N. Y. 355, the defendant had set his servant to shovel snow and ice off the roof of a house. The servant procured the assistance of A. B. was injured by the fall of the ice; it did not appear whether the ice was thrown by the servant or A.: the defendant held responsible (two judges dissenting). One of the judges based his decision on the ground that the servant was entitled to procure aid. It is submitted that the point ought to turn on the question whether he was acting within the scope of his authority in employing A.

fact?" Answer, "if present, he is a principal, if absent an accessory before the fact" (*c*). On similar grounds, a baker, who knew that a servant put into bread alum, contrary to the 36th Geo. III. c. 22, s. 3, and the 37th Geo. III., c. 98, s. 21, was held to be properly indicted for selling bread which contained so much alum as made it injurious to health (*d*). If the employer makes use of an agent who is ignorant of the criminal character of an act, the former is liable; if both are aware that the act which they do is illegal, both are liable. The general principle prevails that a man can be made criminally responsible only for an act which he has himself committed or ordered. "Whoever actually commits, or takes part in the actual commission of a crime, is a principal in the first degree, whether he is on the spot when the crime is committed or not;" and "whoever aids or abets the actual commission of a crime, either at the place where it is committed, or elsewhere, is a principal in the second degree in that crime" (*e*). Some important exceptions have sprung up. Masters may be criminally liable for libels published by their servants acting within the scope of their employment, even though they are no parties to the publication. The proprietor of a newspaper, for example, may be absent at the time of the publication of a libel; he may be totally ignorant of it, and morally innocent; the editor or other servant may have acted negligently; but at Common Law the proprietor was *primâ facie* liable. Thus in *R.* v. *Almon* (*f*) the owner of a book-shop was indicted for the sale of a libellous pamphlet of the nature of which it did not appear that he was aware, and in *R.* v. *Walter* (*g*), decided in 1799, Lord Kenyon ruled that the proprietor of a newspaper was answer-

(*c*) Foster, C. C. 125.

(*d*) *R.* v. *Dixon* (1814), 3 M. & S. 11; 4 Camp. 12.

(*e*) Stephen's Digest of Criminal Law, pp. 22 & 23. Of course a master might be guilty of manslaughter for the acts of servants; *e. g.* if a druggist employed an unskilful assistant, and customers were thereby poisoned.

(*f*) (1770), 5 Bur. 2686.

(*g*) 3 Esp. 21; also *R.* v. *Gutch* (1829), Mood and Mal. 432.

able criminally for the acts of his servant though he lived in the country and had nothing to do with the conducting of the newspaper.

This is, however, subject to sec. 7 of the 6 & 7 Vict. c. 96, which says : " And be it enacted, that whensoever, upon the trial of any indictment or information for the publication of a libel, under the plea of 'not guilty,' evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part " (*h*).

There is another class of cases, hard to define, in which masters have been made to answer in criminal or quasi criminal proceedings, for acts the knowledge of which was not brought home to them. In interpreting certain statutes, particularly those relating to revenue purposes, Courts have disregarded the presumption that a person is criminally liable for no acts but his own, on the ground that, though penal in their consequences, the proceedings were substantially civil; that it was a master's duty to prevent breaches of the law by his servants; or that the statutes would be rendered inoperative if a master were not punished for their acts. It is too late to question the legality of these decisions, however difficult it may be to reconcile some of them with the principle that *mens rea* is necessary to constitute a criminal offence. The 35 & 36 Vict. c. 94, s. 16, made it an offence for " any licensed person " to supply any liquor to a constable on duty. It was argued in one case that a licensed victualler ought not to be convicted under this section when liquor was supplied by a servant without his master's knowledge. That was not the view of the Court; it

(*h*) *R.* v. *Holbrook* (1877), L. R. 3 Q. B. D. 60 ; 47 L. J. Q. B. 35 ; 37 L. T. 530 ; L. R. 4 Q. B. D. 42 ; 48 L. J. Q. B. 113 ; 39 L. T. 536.

was thought enough that the servant knew (*i*). In the subsequent case of *Bosley* v. *Davies* (*k*), proceedings were taken under sec. 17 of the same Act against a publican as a "licensed person" who "suffered any gambling," &c. The Court decided that actual knowledge of the offence by the master was not necessary; but that there must be some evidence that he or his servants connived at what was going on. This interpretation was adopted in *Redgate* v. *Haynes* (*l*).

(*i*) *Mullens* v. *Collins*: see note (*l*).

(*k*) Ditto.

(*l*) See below. The following are the chief cases:—MASTER LIABLE—*A.-G.* v. *Stranyforth* (1721), Bunb. 97. (The Crown lost duties on wine by mistake of clerk of one of five partners; defendants liable.) *A.-G.* v. *Burgers* (1726), Bunb. 223 (Pengelly, C.B., ruled that, if several persons were concerned either in partnership or otherwise, the Crown might come against any one of them for the whole penalty, it (non-payment of duty) being in the nature of a tort.) *Mitchell* v. *Torup* (1766), Parker, 227. (Tea imported by sailors without knowledge of owners; ship forfeited.) *R.* v. *Dixon* (1814), 4 Camp. 12; 3 M. & S. 11; see note (*d*). *A.-G.* v. *Siddon* (1830), 1 C. & J. 220; 1 Tyr. 41. (Dealer in tobacco convicted of harbouring and concealing tobacco, which was, in fact, concealed by his servant. *Advocate-General* v. *Grant* (1853), 15 T. 980. (Clerk to a distiller sold a cask of whisky to one who had no licence to sell spirits; sent it to the purchaser with permit obtained for another; an offence within 2 Will. IV. c. 16, for which employers liable.) *Michell* v. *Brown* (1858), 29 L. J. M. C. 53. (Owner of a vessel convicted under 11th sec. of 54 Geo. 3, c. 159, which makes it an offence to throw out of any vessel in a navigable river ballast, &c., though owner not on board at the time of the offence.) *Howells* v. *Wynne* (1863), 15 C. B. N. S. 3; 32 L. J. M. C. 241. (See Mines Regulation Act, 35 & 36 Vict. c. 76, s. 51 & 52.) *Searle* v. *Reynolds* (1866), 7 B. & S. 704; 14 L. T. N. S. 518. (Appellant not liable for disobedience of his foreman to order of inspector to disinfect certain premises, Cockburn, C. J.; appellant liable, Mellor, J.) *Core* v. *James* (1871), L. R. 7 Q. B. 135. (To convict baker under 6 & 7 Wm. IV. c. 37, s. 8, for putting alum in bread, knowledge necessary; but the knowledge of the servant will suffice to make master liable.) *Barnes* v. *Akroyd* (1872), L. R. 7 Q. B. 474; 41 L. J. M. C. 110. (Occupiers of factory liable under 18 & 19 Vict. c. 121, s. 12, and 23 & 24 Vict. c. 77, s. 13, for a nuisance by emission of smoke caused by their servants.) *Mullins* v. *Collins* (1874), L. R. 9 Q. B. 292; 43 L. J. M. C. 67; 29 L. T. N. S. 838. (A licensed victualler liable, under 35 & 36 Vict. c. 94, s. 16, sub-s. 2; although he had no knowledge that his servant had supplied drink to a constable on duty.) *Bosley* v. *Davies* (1875), L. R. 1 Q. B. D. 84; 45 L. J. M. C. 27; 33 L. T. N. S. 528. (Appellant charged with "suffering" gaming on his licensed premises; case sent back to the justices with an intimation that, though actual knowledge of card-playing on the part of the appellant or his servants need not be shown, some circumstances must be proved from which it could be inferred that they connived at what was going on.) *Redgate* v. *Haynes* (1876), L. R. 1 Q. B. D. 89. (Appellant charged under section 17 of the Intoxicating Liquors Licensing Act, 1872, 35 & 36 Vict. c. 94, with "suffering" gaming to be carried on in an hotel: justices inferred that the appellant knew that gaming was intended to be carried on, and took

Looking to the variety of the decisions collected below, all that can be said is that there is a *primâ facie* improbability against criminal liability in the absence of *mens rea;* that the Legislature may, nevertheless, for public reasons, impose penalties on those who do not prevent as well as those who commit certain offences; and that the words of each statute must determine whether a master is chargeable for acts which are unknown to him.

Employers have frequently been held criminally answerable for nuisances committed by their servants. Thus in *R.* v. *Medley* (*m*) the directors of a gas company were indicted jointly with their servants, who conducted the works, for turning refuse into a stream. Denman, C. J., directed the jury to find the defendants guilty, though they were ignorant of what had been done. Perhaps some of such decisions were given at a time when the difference between criminal and civil responsibility had not been precisely determined.

pains not to know what her guests were doing.) MASTER NOT LIABLE. —*Harrison* v. *Leaper* (1862), 5 L. T. N. S. 640. (Owner of a steam threshing machine not liable when his servant put it, without his master's orders and contrary to the Highway Act, too near the road.) *Copley* v. *Burton* (1870), 39 L. J. M. C. 141. (A. kept a refreshment room, and had a notice as to penalties incurred for supplying refreshments to persons not travellers during prohibited hours; his servant neglected to question certain strangers; "Gross negligence or want of precaution in this matter would be evidence of guilt, but there is nothing of the sort here," Willes, J.) *Nichols* v. *Hall* (1873), L. R. 8 C. P. 322. (To convict a person of an offence under order made in virtue of Contagious Diseases (Animal) Act, knowledge that animal is diseased, necessary.) *R.* v. *Handley* (1864), 9 L. T. N. S. 827. (To sustain conviction under 5 & 6 Vict. c. 99, ss. 8 & 13, for employment of females in mines, knowledge or acquiescence must be proved.) *R.* v. *Gilroys* (1866), 4 R. (3rd series) 656. (Sale of beer from cart on highway by a servant employed to deliver beer, for which orders had not previously been given at the brewery; no part of the duty of the servant to sell beer; no evidence of servant's knowledge.) *Dickenson* v. *Fletcher* (1873), L. R. 9 C. P. 1; 43 L. J. M. C. 25. (See Mines Regulation Act, 23 & 24 Vict. c. 151, ss. 10 & 22.) *Baker* v. *Carter* (1878), L. R. 3 Ex. D. 132. (See Coal Mines Regulation Act, 1872, s. 51.) Under the Wine and Beer House Acts, 1869 and 1870 (32 & 33 Vict. c. 27, s. 12, and 33 & 34 Vict. c. 29, s. 15), masters are liable for acts of servants.) See also *Hearne* v. *Garton* (1859), 28 L. J. M. C. 216; *R.* v. *Bishop* (1880), L. R. 5 Q. B. D. 259.

(*m*) (1834), 6 C. & P. 292. See also *R.* v. *Stephen* (1866), L. R. 1 Q. B. 702. (Owner of works carried on by his agents, indictable for causing nuisance by depositing rubbish in a public navigable river, though the defendant had prohibited the workmen from so depositing the rubbish.)

Perhaps, too, they are justified by the fact that proceedings for nuisances are in substance, though not in form, civil.

Under this class of cases may be ranged those of which *Gregory* v. *Piper* (*n*) is a type. That was a case in which a servant, though careful and skilful, could not carry out the orders of his master without doing the mischief which was complained of. A servant was ordered to lay down a quantity of rubbish near the plaintiff's wall and gates—which could not be done without some of the rubbish touching the wall or gates; the defendant was made answerable for the inevitable or natural consequences of his instructions.

Innkeepers are at Common Law liable to their guests for loss of luggage, &c., caused by the negligence or larceny of their servants (*o*). But it is an answer to show that the guest has been guilty of gross negligence which has contributed to his loss (*p*). When a guest at an inn went to bed leaving his door ajar, and some one entered in the night and stole money from the pockets of his trousers which he had left on a chair, it was held that the proper question for a jury, was whether the loss would have occurred "if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances" (*q*). The 27 & 28 Vict. c. 41, s. 1, limits the liability of an innkeeper to £30, except when the goods or property shall have been lost, stolen, or injured through the wilful act, default, or neglect of the innkeeper or any servant in his employ, or shall have been deposited with the innkeeper expressly for safe custody (*r*).

At Common Law common carriers are liable not only for the negligence but also for the frauds and larceny of their

(*n*) (1829), 9 B. & C. 591.

(*o*) *Kent* v. *Shuckard* (1831), 2 B. & Ad. 803.

(*p*) *Calye's Case*, 8 Rep. 32 a.; *Richmond* v. *Smith* (1828), 8 B. & C. 9.

(*q*) *Cashill* v. *Wright* (1856), 6 E. & B. 891; 2 Jur. N. S. 1072.

(*r*) *Oppenheim* v. *White Lion Hotel Co.* (1871), L. R. 6 C. P. 515; 40 L. J. C. P. 93; 25 L. T. 93. See *Dixon* v. *Birch* (1873), L. R. 8 Ex. 135; 42 L. J. Ex. 135; 28 L. T. 360; 21 W. R. 443. (Salaried manager not innkeeper.) See as to defects in notice, *Spice* v. *Bacon* (1877), L. R. 2 Ex. D. 463; 46 L. J. Q. B. 713; 36 L. T. 896; 25 W. R. 840.

servants (*s*). Though their liability for felony on the part of their servants has been disputed, it follows from the fact of their being insurers. The 11 Geo. IV. & 1 Will. IV. c. 68, s. 8, expressly says, "nothing in this Act shall be deemed to protect any mail contractor, stage coach proprietor, or other common carrier for hire, from liability to answer for loss or injury to any goods or articles whatsoever arising from the felonious acts of any coachman, guard, bookkeeper, porter, or other servant in his or their employ, nor to protect any such coachman, guard, bookkeeper, or other servant, from liability for any loss or injury occasioned by his or their own personal neglect or misconduct (*t*)."

A master is answerable for the negligence or other tortious conduct of his servant in doing the class of acts which he was ordered or authorised to do.

In dealing with cases of negligence or other misconduct on the part of servants coming within this category, the law has pursued a middle course. It would, on the one hand, be wholly unreasonable to hold a master answerable for acts of his servants, the connection of which with their service was fortuitous, or exceedingly remote. No prudent man would venture to employ another if such were an incident of the contract of hiring and service. On the other hand, the responsibility of masters would be slight, the remedies of injured persons would be worth little, if a master were liable only for acts which he had expressly or by implication ordered. Between these two extremes, a line has been drawn; and probably the exact character of the employer's responsibility cannot be more accurately defined than it is by Willes, J., in words frequently quoted

(*s*) Brown on Law of Carriers, p. 58.

(*t*) As to who are servants, see *Machu* v. *London & South-Western Ry. Co.* (1848), 2 Ex. 415; 12 Jur. 501; 17 L. J. Ex. 271; and *Way* v. *Great Eastern Ry. Co.*, L. R. 1 Q. B. D. 692. As to what will be evidence of stealing by servant, see *Great Western Ry. Co.* v. *Rimell* (1856), 18 C. B. 575; and *McQueen* v. *Great Western Ry. Co.* (1875), L. R. 10 Q. B. 569; 44 L. J. Q. B. 130.

with judicial approval. "He (the employer) has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in" (*u*). Servants are liable to err and to abuse their position. Masters must take the risk of mistakes; they will not be heard to say, "I told my coachman to drive slowly; I am not answerable if he drove too fast." A groom who was riding his master's horse, and who was desirous of overtaking his master, spurred it recklessly as he passed a waggon; the horse kicked and struck the waggoner (*x*); the master was liable for this reckless act. A coal-merchant sends his carman to deliver coals at the house of a customer; the carman allows the coal-hole in the pavement to be open and unguarded; a passer-by, falling into the opening, is hurt; the coal-merchant is responsible (*y*). A servant negligently leaves a horse and cart in the street; a passer-by strikes the horse; an accident occurs; the master is liable (*z*). So where a person was induced to continue to supply oats on credit to a customer of a bank on the strength of the representation of the manager, who fraudulently concealed the fact that a certain guarantee must be of no value, the bank was held answerable for his fraud (*a*).

It matters not what were the instructions given to the servant as to the manner in which he ought to do his duty; it matters not that a servant has abused his authority, exceeded or deviated from his instructions; it will be no defence in proceedings against the master that his servant has done wrongfully that which he was ordered to do properly. Thus it is no answer in an action against a company for infringement of a patent that its servants acted against

(*u*) *Barwick* v. *English Joint Stock Co.* (1867), L. R. 2 Ex. 259; 36 L. J. Ex. 147.

(*x*) *North* v. *Smith* (1861), 4 L. T. N. S. 407; 10 C. B. N. S. 572.

(*y*) *Whiteley* v. *Pepper* (1877), L. R. 2 Q. B. D. 276.

(*z*) *Illidge* v. *Goodwin* (1831), 5 C. & P. 190.

(*a*) *Barwick* v. *English Joint Stock Co.*, see note (*u*).

the express orders of the directors (*b*). It is immaterial, except so far as it helps to define the servant's duties, that he received precise instructions or that he was directed to be careful. The maxim *respondeat superior* would be nullified if an employer could escape liability by merely enjoining care or caution. In short, it is the nature of the employment and not that of the particular instructions which determines the master's liability. Whatever arrangement he makes with his servants, the law will hold that "there is an implied authority to do all those things that are necessary for the protection of the property entrusted to a person, or for fulfilling the duty which a person has to perform" (*c*). This was strikingly exemplified in the case of *Limpus* v. *General Omnibus Co.* (*d*), to which reference has already been made.

The defendants' drivers had printed instructions "not on any account to race with or obstruct another omnibus, or hinder or annoy the driver or conductor thereof in his business." A driver in the service of the defendants drove his omnibus across the road in front of a rival omnibus and overturned it. "I pulled across him," said the driver, "to keep him from passing me, to serve him as he had served me." Mr. Justice Wightman thought the defendants not liable, the act being wholly wilful and unjustifiable on the part of the servant, and quite beyond the scope of his employment. But the rest of the Court was of opinion that the act having been done while the servant was acting in the course of his master's service and for his benefit, the master was liable. Speaking of the instructions given to the driver, Mr. Justice Willes observed, "I beg to say, in my opinion those instructions were perfectly immaterial. If they were disregarded, the law casts upon the master the liability for the acts of

(*b*) *Betts* v. *De Vitre* (1868), L. R. 3 Ch. 441; and compare *Stevens* v. *Woodward* (1881), L. R. 6 Q. B. D. 318.

(*c*) Blackburn, J., in *Allen* v. *London & South Western Ry. Co.* (1870), L. R. 6 Q. B., p. 69; see *Limpus* v. *General Omnibus Co.* (1862), 32 L. J. Ex. 35; 1 H. & C. 526; *Bayley* v. *Manchester, Sheffield, and Lincoln Ry. Co.* (1873), L. R. 8 C. P. 148, 472.

(*d*) See last note.

his servant in the course of his employment, and the law is not so futile as to allow the master, by giving secret instructions to a servant, to set aside his own liability. I hold it to be perfectly immaterial that the master directed the servant not to do the act which he did. As well might it be said that if a master employing a servant told him that he should never break the law, he might thus absolve himself from all liability for any act of his servant, though in the course of the employment."

It is a consequence of the same principle that a master will be answerable for things done by a servant if they be performed in an emergency, and if they be usually performed by such servants. Thus, in *Goff* v. *Great Northern Railway Company* (*e*), the defendants were found liable in an action for false imprisonment brought by a passenger who had been given into custody by a superintendent of the line, on a charge of travelling without a ticket with intent to avoid payment. The question in each case appears to be, does the servant represent the master? And it will be assumed that the former has the powers which, looking to the ordinary course of business and general usage, naturally belong to one in his position.

Speaking of this class of cases, in *The Bank of New South Wales* v. *Owston* (*f*), Sir Montague Smith says, "the result of the decisions in all these cases is, that the authority to arrest offenders was only implied where the duties which the officer was employed to discharge could not be efficiently performed for the benefit of his employer, unless he had the power to apprehend offenders promptly on the spot; though it was suggested that possibly a like authority might be implied in the supposed cases of a servant in charge of his master's property arresting a man who he had reason to believe was attempting to steal, or had actually stolen it. In the latter of these

(*e*) (1861) 30 L. J. Q. B. 148; *Giles* v. *Taff Vale Ry. Co.* (1852), 2 E. & B. 882; and compare *Poulton* v. *London and South-Western Ry. Co.* (1867), L. R. 2 Q. B. 534.

(*f*) (1879), L. R. 4 App. 270; 48 L. J. P. C. 25; 40 L. T. N. S. 500.

cases it is part of the supposition that the property might be got back by the arrest; but in such a case, the time, place, and opportunity of consulting the employer before acting, would be material circumstances to be considered in determining the question of authority." He added, "an authority to be exercised only in cases of emergency, and derived from the exigency of the occasion, is evidently a limited one, and before it can arise, a state of facts must exist which shows that such exigency is present, or from which it might be reasonably supposed to be present. If a general authority is proved, it is enough to show, commonly, that the agent was acting in what he did, on behalf of his principal. But in the case of such a limited authority as that referred to, the question whether the emergency existed, or might reasonably have been supposed to exist, arises for decision; and that question raises issues beyond the mere facts that the agent acted on behalf of and in the supposed interest of the principal. Were it otherwise, the special authority would be equivalent to a general one."

In some cases the Courts appear to have laid down the rule that, although a master is answerable for the consequences of a lawful act negligently done by his servants, he is not answerable for the consequences of an unlawful act done wilfully. In *Lyons* v. *Martin* (*g*), a servant who was authorised to merely distrain cattle *damage feasant*, drove a horse from the highway into the master's close and there impounded it.

In *Bolingbroke* v. *Local Board of Swindon* (*h*), a person to whom the defendants had entrusted complete powers for the management of a sewage farm, wrongfully went upon the plaintiff's farm and did various acts in order to facilitate the flow of drainage along a ditch which separated the plaintiff's from the defendants' land. In both these cases, the masters

(*g*) (1838), 8 A. & E. 512. See also *Gordon* v. *Rolt* (1849), 4 Ex. 365; 7 D. & L. 87; 18 L. J. Ex. 432. (This turned on a point of pleading—the distinction between case and trespass—and it is sometimes understood to determine more than it actually did.) In favour of *Lyons* v. *Martin* may be cited *Waldie* v. *Duke of Roxburghe* (1st March, 1822), 1 S. 367; on appeal (10th February, 1825), 1 W. S. 1, which decided that a person was not liable for a breach of an interdict, which was committed with his knowledge by a servant.

(*h*) (1874), L. R. 9 C. P. 575.

were exonerated from responsibility. These decisions or, at all events, certain expressions in the judgments are, it is submitted, not reconcilable with recognized authorities. In *Seymour* v. *Greenwood* (*i*), and *Bayley* v. *Manchester, Sheffield, and Lincolnshire Ry. Co.* (*k*), the conduct of the defendants' servants in forcibly removing passengers was unlawful. All frauds committed by servants in the course of their business are unlawful. Yet employers are answerable for such conduct. No doubt, in *Lyons* v. *Martin*, Lord Denman and Patteson, J., laid stress upon the fact that the conduct of the servant was unlawful in itself. But these *dicta*—which were questioned by Crompton, J., in *Limpus* v. *General Omnibus Co.* (*l*)—were probably unnecessary for the decision; the conduct of the servant not being incidental to his duties. The fact that an act is wilful or unlawful may be important in determining whether it is within the scope of employment; but it is submitted that the circumstance does not necessarily absolve the master.

Another test, often suggested, is that, in order to render his master liable, the conduct of the servant must be to his master's benefit. Generally, no doubt, there must be a concurrence of two things in order to make a master liable—the act must be done in the course of his service and for his benefit (*m*). If a servant were, without the knowledge of his employer, to take his master's carriage and horse and go on business of his own, and damage were thereby to result, an action would not lie against the master. So, too, if a footman were, as he conceived in the interest of his employer, to drive his carriage, the latter would not be answerable for the consequences. But cases are conceivable in which, without any intention on the part of the servant to benefit the master, he would incur liability. A., for example, is employed to warn

(*i*) (1861), 30 L. J. Ex. 189 and 327; 7 H. & N. 355.
(*k*) (1873), L. R. 8 C. P. 148.
(*l*) (1862), 32 L. J. Ex. 34; 1 H. & C. 526.
(*m*) *Limpus* v. *General Omnibus Co.*, 1 H. & C. at p. 540, referring to *Huzzey* v. *Field*, 2 C. M. & R. 432.

persons who go over a crossing near a sharp curve of the approach of a train. He forgets to do so, he falls asleep or gets drunk, and B. is run over; A.'s employers would be, it is conceived, answerable for misconduct certainly not intended to benefit them. It is different when the servant has ceased to act as a servant; when his conduct is no more a necessary or natural consequence of his employment than the act of any stranger; when he is doing that which any stranger might as naturally do; and, in short, when he acts as he does, not because he is a servant but because he is evil disposed.

A master will be liable for a servant's acts if the servant does what he was ordered to do in a roundabout way, or if, in carrying out his master's orders, he does incidentally something on his own behalf.

This class of cases, which approximate to those already named, turns on questions of degree; and it is difficult to lay down a rule which will not include too much or too little. The last part of the above statement of the law may be too wide. A few illustrations will show the tendency of the decisions. In one instance (*n*), a cart driven by a servant of the defendant, knocked down and injured the plaintiff in the City of London. It was proved by the defendant that the business of the servants was to go from Burton Crescent Mews to Finchley, and that the spot at which the accident took place was out of the way. In summing up the case to the jury, Baron Parke left the question thus: "If the servants, being on their master's business, took a detour to call upon a friend, the master will be responsible. If you think the servants lent the cart to a person who was driving without the defendant's knowledge, he will not be responsible. Or, if you think that

(*n*) *Joel* v. *Morison* (1834), 6 C. & P. 501.

the young man who was driving took the cart surreptitiously, and was not at the time employed on his master's business, the defendant will not be liable. The master is only liable where the servant is acting in the course of his employment. If he was going out of his way, against his master's implied commands, when driving on his master's business, he will make his master liable; but if he was going on a frolic of his own, without being at all on his master's business, the master will not be liable." When a servant, contrary to his master's orders, went out of his way to deliver a parcel of his own, and in returning injured the plaintiff, the master was held liable (*o*). On the other hand, a master was not made answerable for the negligence of a servant who, having finished his business and returned home, started on a separate journey for a purpose of his own without his master's knowledge (*p*).

A master is not responsible for the acts of servants which are unconnected with and not incident to their service, and which are not done in the course of their employment.

Every act by a servant, as has already been stated, is not in law that of his master. He may be bent on his own private ends; he may be engaged on his own and not his master's business; he may be acting wholly outside the scope of his duties; he may cease to act in any way as a servant. His conduct may not pertain to or be a natural consequence of

(*o*) *Sleath* v. *Wilson* (1839), 9 C. & P. 607. Erskine, J., makes the question turn on whether or not the servant was "intrusted" with the control of the carriage, and his language is virtually repeated by Coleridge, C.J.; see also note (*p*), *infra*.

(*p*) *Mitchell* v. *Crosweller* (1853), 13 C. B. 237; 22 L. J. C. P. 100; *Storey* v. *Ashton* (1869), L. R. 4 Q. B. 476; 38 L. J. Q. B. 223. In *Rayner* v. *Mitchell* (1877), L. R. 2 C. P. D. 357, a carman started, for a purpose wholly unconnected with his master's business, to deliver a coffin at the house of a relative, but, in the course of the journey, picked up two of his master's casks: held that the master was not liable.

his duties or of the confidence reposed in him (*q*). It would be wholly unjust to throw upon the employer the responsibility for acts done in these circumstances. The two cases commonly quoted in illustration of this limitation are *McManus* v. *Crickett* (*r*) and *Croft* v. *Alison* (*s*). The evidence in the former case was that a servant of the defendant had wilfully driven a chariot against the plaintiff's chaise; and the Court held that an action of trespass did not lie against the master. In the latter, the facts were that the plaintiff's carriage became entangled with the defendant's through the negligence of the defendant's driver, and that the defendant's driver wantonly struck the plaintiff's horses with his whip, so that they started and injured the plaintiff's carriage. In these circumstances the defendant was held not liable. So, too, when a clerk to a firm of solicitors went contrary to orders into a lavatory intended exclusively for the use of one of the partners and allowed a tap to run, the

(*q*) In Angell and Ames, on Corporations, s. 388, the rule is thus expressed: "When a servant quits sight of the object for which he is employed, and, without having in view his regular duties, pursues a course suggested by malice, he no longer acts in pursuance of the authority given him. The dividing line is the wilfulness of the act; and there is no case where the principal has been made liable for a wilful trespass committed by a servant, because commanded and approved by a general agent." The authors refer to *Vanderbilt* v. *Richmond Turnpike Co.*, 2 Const. 479. This statement, which is often substantially repeated, is too wide.

(*r*) (1800), 1 East, 106.

(*s*) (1821), 4 B. & Ald. 590. The Court drew the following distinction: "If a servant driving a carriage, in order to effect some purpose of his own, wantonly strike the horses of another person, and produce the accident, the master will not be liable. But if, in order to perform his master's orders, he strikes, but injudiciously, and in order to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master will be liable, being an act done in pursuance of the servant's employment." See also *Lamb* v. *Palk* (1840), 9 C. & P. 629. (A van standing at the door of A.'s shop from which goods were being removed. A.'s gig stood behind the van. B.'s coachman got off his box and laid hold of the van-horse's head. A packing-case fell from the van and broke the shafts of the gig: held by Gurney, B., that B. was not liable, as the coachman was not at the time acting in the service of B.) With *McManus* v. *Crickett* compare *Dalrymple* v. *McGill* (1813), Home, 387. (A master not liable for act of servant, who, without orders, took a horse of a neighbour, and rode it so hard that the horse was permanently injured.) These cases seem inconsistent with *Limpus* v. *General Omnibus Co.*, and *Page* v. *Defries* (1866), 7 B. & S. 137.

defendants were held not to be liable for the damage done to the premises of the plaintiff (*t*). The same conclusion was arrived at in *William* v. *Jones* (*u*), the facts of which were these: defendant's servant, a carpenter, was employed in making a signboard in plaintiff's shed. The carpenter, in lighting his pipe, negligently set fire to the shed. The master was not liable.

In *Allen* v. *The London and South-Western Ry. Co.* (*b*), a ticket clerk in the service of the defendants, erroneously suspecting that a person had attempted to rob the till, gave him into custody after the attempt. In an action for false imprisonment against the company, the plaintiff failed on the ground that the clerk had no authority to take steps to punish an offender. "There is a marked distinction," said Blackburn, J., "between an act done for the purpose of protecting the property by preventing a felony or of recovering it back, and an act done for the purpose of punishing the offender for that which has already been done. There is no implied authority in a person having the custody of property to take such steps as he thinks fit to punish a person who he supposes has done something with reference to the property which he has not done. The act of punishing the offender is not anything done with reference to the property, it is done merely for the purpose of vindicating justice. . . . There is an implied authority to do all those things that are necessary for the protection of the property entrusted to a person, or for fulfilling the duty which a person has to perform." So in *Edwards* v. *London and North-Western Ry. Co.* (*c*), it was decided by the Court of Common Pleas that a foreman porter had not from his position implied authority to give into custody a person reasonably suspected of stealing the company's property, though the porter happened to be in charge of the station at the time. The facts of *Walker* v.

(*t*) *Stevens* v. *Woodward* (1881), L. R. 6 Q. B. D. 318.

(*u*) (1864-65), 3 H. & C. 602; 33 L. J. Ex. 297.

(*b*) (1870), L. R. 6 Q. B. 65; 40 L. J. Q. B. 55; 19 W. R. 127.

(*c*) (1870), L. R. 5 C. P. 445.

South-Western Ry. Co. (*d*) show the fineness of the distinctions upon which the Courts proceed. It was decided that the defendants were not answerable for the act of their servant, a constable, in giving the plaintiff into custody on a charge of assaulting the defendants' servants after a struggle was over and when the plaintiff was walking quietly away. On the other hand, the Court thought it might be within the scope of the authority of a servant, who was a constable, to give into custody while a struggle was going on and before it was over, a person who, it was said, refused to quit the company's premises, or had assaulted the company's servants. In *Moore* v. *Metropolitan Ry. Co.* (*e*), the company were held liable for the act of an inspector of one of their stations who gave plaintiff into custody on a charge of fraud, on the ground that the defendants were empowered under sec. 104 of their Act to arrest persons committing frauds under sec. 103, and that it might be presumed, in the absence of evidence to the contrary, that the inspector as representative of the defendants had authority to arrest. All these cases are applications—though not very obvious or perhaps consistent—of the principle stated by Blackburn, J., in *Allen* v. *London and South-Western Ry. Co.* (*f*), that "there is

(*d*) (1870), L. R. 5 C. P. 640.

(*e*) (1872), L. R. 8 Q. B. 36; 42 L. J. Q. B. 23; 27 L. T. N. S. 579. See also *Goff* v. *Great Northern Ry. Co.* (1861), L. R. 2 Q. B. 584; *Van den Eynde* v. *Ulster Ry. Co.* (1871), 5 Ir. C. L. 328.

(*f*) Page 69. Many decisions state that the test is whether the servant has "authority." This term is the source of much confusion. It means either (1) express authority given by a principal to an agent; (2) conduct which would leave persons to believe an agreement was authorized by his principal; and (3) in regard to torts, conduct which is incidental to and somehow connected with the duties of the agent or servant. A newspaper proprietor is at Common Law liable, as has been stated, for libels published by the negligence of a servant, even if the servant has been expressly told not to publish the particular libellous matter. A banker is liable for a fraud of a cashier, which is committed in some matter connected with his duties, even though the fraud be contrary to the wishes of the banker. It is only by straining language that we can say in such cases that a person had implied authority to do that which he was expressly forbidden to do. See *Bank of New South Wales* v. *Owston*, L. R. 5 Ap. 4. It is, in fact, basing the master's and employer's liability on a legal fiction, to make it turn on a question of authority. The term has, no doubt, produced misconceptions. A whole class of dicta, now doubtful or overruled, may be traced to its use. A somewhat similar

an implied authority to do all those things that are necessary for the protection of the property entrusted to a person, or for fulfilling the duty which a person has to perform."

A master will be liable for the tortious acts of his servant when assuming to act for him if the master adopts or ratifies them.

The principle is thus stated in *Wilson* v. *Tummon* (*g*): "An act done for another by a person not assuming to act for himself but for such other person, though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, whether it be for his detriment or advantage, and whether it be founded on a tort or a contract, to the same extent and with all the consequences which follow from the same act if done by his previous authority."

The act must be done for and on behalf of the master (*h*). What is evidence of ratification is a question of fact. In order that ratification be proved, there must be a knowledge of the fact to be ratified and an intention to ratify.

Masters are liable for the frauds or other torts of their servants to the extent to which they are benefited thereby.

This is affirmed in many cases, and it is necessary to refer

question arose in trials for embezzlements by servants under 39 Geo. III. c. 85. It was necessary to show that the servant had, "by virtue of such employment," received or taken into possession the chattel which he was charged with misappropriating. See as to decisions under this section, *Rex* v. *Mellish* (1805), R. & R. 80; *Rex* v. *Smith* (1823), R. & R. 516; *Rex* v. *Beechey* (1817), R. & R. 319.

(*g*) (1843), 6 Scott, N. R. p. 904. See *Eastern Counties Ry. Co.* v. *Broom* (1851), 6 Ex. 314; *Roe* v. *Birkenhead* (1851), 21 L. J. Ex. 90; 7 Ex. 36.

(*h*) *Wilson* v. *Barker* (1833), 4 B. & Ad. 616.

here only to Lord Selborne's judgment in *Houldsworth* v. *City of Glasgow Bank* (*i*); and Lord Cranworth's judgment in *Addie* v. *The Western Bank of Scotland* (*k*).

Companies are not liable for the acts of their servants if the acts are not such as the companies could be entitled to do.

Under this head fall several decisions, of which the most important is *Poulton* v. *London and South-Western Ry. Co.* (*l*). A station master demanded payment for carriage of a horse, arrested the plaintiff, who refused to pay, and kept him in custody for a time. The plaintiff brought an action for false imprisonment. The company had no power under their Act to arrest a person for non-payment of carriage of a horse, and the Court held that the action would not lie, on the ground, as stated by Blackburn, J., "that an act was done by the station master completely out of the scope of his authority, which there can be no possible ground for supposing the railway company authorised him to do, and a thing which could never be right on the part of the company to do."

Public officers under Government are not responsible for torts committed by their servants.

Thus in the well-known case of *Lane* v. *Cotton* (*m*), the Postmaster-General, it was held, incurred no responsibility for the loss of letters in the office by reason of the negligence of a servant; and in *Whitfield* v. *Lord Le*

(*i*) L. R. 5 Ap. 317.
(*k*) L. R. 1 H. of L. (Sc.) 154; *Mackay* v. *Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394.
(*l*) (1867), L. R. 2 Q. B. 534 and 540.
(*m*) 1 Lord Raym. 646; 12 Mod. 473.

Despenser (*n*), decided in 1778, it was held that case did not lie against the Postmaster-General for a bank note which was stolen by one of the sorters out of a letter put into the Post Office. The principles upon which a master or employer is held answerable for the acts of servants do not apply to the Crown. "If the master or employer is answerable upon the principle that *qui facit per alium facit per se*, this would not apply to the sovereign, who cannot be required to answer for his own personal acts. If it be said that the master is answerable for the negligence of his servant, because it may be considered to have arisen from his own misconduct or negligence in selecting or retaining a careless servant, that principle cannot apply to the sovereign, to whom negligence or misconduct cannot be imputed, and for which, if they occur in fact, the law affords no remedy" (*o*).

Sometimes the Legislature has expressly relieved Government officials from liability for the acts of their subordinates. See as to this, *O'Grady* v. *Cardwell*, in which the defendant, Secretary of State for War, was held not personally liable in an action for breach of contract entered into by him on behalf of the War Department (*p*).

This exemption does not extend, as was held in *Sutton* v. *Clarke* (*q*) and *Hall* v. *Smith* (*r*), and other cases, to trustees and other bodies which perform statutory duties, and the profits of which are appropriated to public purposes (*s*).

A master is not liable for injuries caused by his

(*n*) Cowper, 754; *Nicholson* v. *Mounsey*, 15 East, 384; see Story on Agency, 319.

(*o*) *Canterbury* v. *Attorney-General* (1843), 1 Phill. 306. (Petition of right against the Crown by the Speaker of House of Commons for loss of furniture, plate, pictures, by a fire alleged to have been caused by the negligence of servants of the Commissioners of Woods and Forests.) As to the liability of a sheriff for the acts of a bailiff, see *Wood* v. *Finnis* (1852), 7 Ex. 363.

(*p*) (1873), 21 W. R. 340.

(*q*) (1815), 1 Marsh. 429.

(*r*) (1824), 2 Bing. 156.

(*s*) *Mersey Dock Trustees* v. *Gibbs* (1866), L. R. 1 H. of L. 93; 35 L. J. Ex. 225.

servant's negligence if they might have been avoided by reasonable care on the part of the person injured.

What constitutes such contributory negligence as will disentitle a plaintiff to recover is a question which does not belong exclusively to the Law of Master and Servant, and it need not be here discussed (*t*).

APPENDIX A.

It is sometimes said that the present law as to the liability of a master for the torts of his servants is a relic of the time when services were performed, as a rule, by slaves or villeins who were the property of their masters, and for whose acts they were naturally held responsible. This plausible view is not borne out by the authorities. No clear trace of the modern doctrine is to be found in early authorities, such as Bracton. One of the few passages in his treatise bearing on the subject is the following (*de Corona*, f. 158), where, discussing wrongs committed by servants, he puts this case: "But what if the servant of any one, in the absence of his lord, has seized the cattle of any tenant of his lord, and the tenant himself complains concerning the servant that he has seized his cattle unjustly, and detained them against bail and surety, and that servant has called the Court of his lord to warrant, and the Court has warranted to him concerning the service? The servant shall be released and the Court shall answer for his own act. But cannot the Court answer without the lord, when the service touches the lord himself? Yes, so that the judgment be amended. But if the cattle be seized without a judgment of the Court, and have been claimed by the lord himself when he was present, and he himself has refused them on bail and not surety, each shall be liable, as it appears, the one for the seizure and the other for the refusal of release. And although his lord himself has avowed the seizure of his servant, he does not acquit the servant, but he charges himself, and each is liable for the act of the servant, the servant because he seized it, and the lord doubly, because he avows the act of his servant, and because he refuses (the release of the thing seized)." "Likewise let it be, that nothing has been done by the Court, nor by the lord of the Court, but only by the

(*t*) *Lax* v. *Darlington* (1879), L. R. 5 Ex. D. 28; 48 L. J. Q. B. 143; 49 L. J. Ex. 105; *Ellis* v. *London & South Western Ry. Co.* (1857), 2 H. & N. 424; 26 L. J. Ex. 349.

servant, as if the servant without the lord or without the Court, has levied a tax upon the tenants of his lord as villeins who are free, or who say that they are perchance, when they are serfs, and afterwards, when he has of his own authority made a distress, and the cattle upon the complaint of the tenant have been released by the viscount upon bail and surety, and a complaint has been made only respecting the servant without the lord, it is asked whether the servant can or ought to answer without the lord, and to bring the case to judgment without him? In which case, it will have to be inquired from the lord, whether he will avow the act of his servants or not, but if not, then the lord may amend it, but if he has avowed, or not amended it, he makes the injury his own, if there has been any injury." Neither in that passage nor any other, as far as I know, in Bracton, is there anything to show that a master was regarded or liable for the conduct of his villein when acting without orders. Apparently the master was liable for the acts of his villeins when he had ratified them, or what is the same, had availed himself of what was done or refused to release what had been seized by them. I am not aware of any case in the *Year Books*, or any passage in Plowden's Reports, Rastell, or Fitzherbert, which clearly lays down the doctrine now accepted. No doubt, instances are to be found in which actions were brought (for example, *Bealieu* v. *Finglam*, 2 H. IV., fol. 18, pl. 6), against masters for the acts of their servants on a custom of the realm. Thus a person was held answerable for the spread of fire when it was due to his guest or servant: Cowell's Institutes, 207, and actions on the case lay against innkeepers for the loss of goods by their servants. That the law was not understood as it is now will be seen from the following citations from Rolle's Abridg. Action on Case, 95: "If a servant, who is my merchant, sells an unsound horse or other chattel at a fair to a man, no action lies against the master for the deceit, for he did not command the servant to sell this *to any one in particular:*" 9 Hen. VI., 53.

Other authorities might be cited to show that a master was not supposed to be liable if a servant abused his authority. Thus Popham, C. J., lays it down in *Waltham* v. *Mulgar*, Moore, 776 (3 James I.), that "where a master sends his servant to do an unlawful act he shall answer for him if he made a mistake in doing the act. But where he sent him to do a lawful act as here to take the goods of the enemies of the king, and he takes the goods of a friend, the master shall not answer. If a master send his servant to market to buy or sell, and he rob or kill by the way, the master shall not answer, but if he sent him to beat one, and he kill or mistake the person and kill another, the master is a murderer." Dodderidge argued that the master was answerable in all public matters. In this case the question was whether the owner of a vessel with letters of marque to seize Spanish ships was responsible to the subjects of a friendly State whose ship had been wrongfully taken. It does not appear to have been contended, as of course would be done in such circumstances in the present day, that a master as a general rule was liable for the acts of his servants in their employment. The sole contention was that the master was liable in all public matters. As late as the time of Charles II. the modern doctrine was virtually denied in *Kingston* v. *Booth* (1683), Skinner, 228, where three justices of the King's Bench laid down the following rule:—"If I command my servant to do what is lawful, and he misbehave himself, or do more, I shall not answer for my servant, but my servant for him-

self, for that it was his own act; otherwise it was in the power of every servant to subject his master to what actions or penalties he pleased. Thirdly, if I command my servant to do a lawful act, as in this case, to pull down a little wooden house (wherein the plaintiff was and would not come out, and which was carried upon wheels into the house to trick the defendant out of possession) and bid them take care they hurt not the plaintiff; if in this doing my servant wound the plaintiff, in trespass and assault of wounding brought against me, I may plead 'not guilty,' and give this in evidence, for that I was not guilty of the wounding; and the pulling down the house was a lawful act."

The Doctor and Student (published 1518), at p. 237, recognises the distinction between sale to a particular person and sale generally. See also Noy's Maxims (published 1641), where it is said at p. 95, c. 44, "If a servant keeps his master's fire negligently, an action lies against the master; otherwise, if he carry it negligently in the street. If I command my servant to distrain, and he ride on the horse taken for the distress, he shall be punished, not I. If a man command his servant to sell a thing which is defective generally to whom he can sell it, deceit lies not against him; otherwise if he bid him sell it to such a man, it does." The doctrine stated in the text is usually said to have been first laid down in *Michael* v. *Alestree*, 2 Lev. (1676), 172, 3 Keb. 650, an action on the case against a master and servant for bringing horses to train in Lincoln's Inn Fields, whereby the plaintiff was injured. Judgment was given for the plaintiff. "It shall be intended the master sent the servant to train the horses there." In the report in Ventris (i. 295), no mention is made of this point or indeed of the action being against the master, and in the report in Keble the master's liability is apparently justified by the fact that he ordered the horses to be brought to an open public place. The modern doctrine was more clearly affirmed by Holt, C. J., in *Turberville* v. *Stamp*, Comb. 459, in 1698, decided only a few years after *Kingston* v. *Booth*, already mentioned—which was an action against a person for allowing fire to extend beyond his close. Holt, C. J., observed, "Though I am not bound by the act of a stranger in any case, yet if my servant doth anything prejudicial to another, it shall bind me, where it may be presumed that he acts by my authority, being about my business." The same view was taken in *Middleton* v. *Fowler* (1699), 1 Salk. 282. (*Nisi Prius, coram* Holt, C. J.) This was an action on the case against defendants, masters of a stage coach. A trunk was delivered to their coachman; it was lost out of the coachman's possession. It seems that no money was paid to the defendants for carrying the trunk; Holt, C. J., held that an action did not lie, and the plaintiff was nonsuited. He thus laid down the rule: "no master is chargeable with the acts of his servant but when he acts in *execution of the authority* given by his master, and then the act of the servant is the act of the master." See also *Jones* v. *Hart* (1699), 2 Salk. 441; L. Ray. 736 (a pawnbroker's servant took a pawn; the pawner tendered the money to the servant, who said he had lost the goods; held by Holt, C. J., that action for trover lay against the master); *Hern* v. *Nichols*, Holt, 46.

For an account of the Roman law as to liabilities of masters, see *Die Haftung für Fremde Culpa nach Römische Recht*, von Dr. P. F. Von Wyss; Pothier, Oblig. 121; M. Sourdat's *Traité de la Responsabilité*.

The variety of reasons given for the existence of this liability is very

surprising. (1.) The servant is the agent of his employer, and the liability of the latter is but an instance of the doctrine *Qui facit per alium facit per se.* Alderson, B., in *Hutchinson* v. *The York, Newcastle, and Berwick Ry. Co.*, 5 Ex. 343; Lord Cranworth in *Bartonshill Coal Co.* v. *Reid*, 3 Macq. 266. This reason scarcely accounts for the liability of masters for acts which they have forbidden and in circumstances in which an action would lie in case, but not trespass. (2.) "The reason that I am liable," says Lord Brougham in *Duncan* v. *Findlater*, 6 C. & F. 910, "is this, that by employing him (the servant) I set the whole thing in motion, and what he does, being done for my benefit and under my direction, I am responsible for the consequences and doing it"—a reason which does not seem to apply to work not dangerous in itself, and which would justify imposing responsibility upon one who employed a contractor equally with one who employed a servant. See Best, C. J., in *Hall* v. *Smith*, 2 Bing. 160. (3.) "There ought to be a remedy against some person capable of paying damages to those injured:" Willes, J., in *Limpus* v. *General Omnibus Co.* (4.) "He (the master) is liable for an injury done to a stranger by his servant acting within the scope of the latter's authority, because the stranger has had no hand in the choice:" Bramwell, B., in *Swainson* v. *North-Eastern Ry. Co.*; a reason which seems to have force only when a master has been guilty of some fault in the choice of his servants. (5.) Holt, C. J., in *Hern* v. *Nichols*, 1 Salk. 289, an action for deceit, puts the law on the ground that as somebody must suffer, it is but right the person who employed the deceiver should do so. (6.) "As in strictness everybody ought to transact his affairs, and it is by the favour and indulgence of the law that he can delegate the power of acting for him to another, it is highly reasonable that he should answer for such substitute, at least *civiliter*, and that his acts, being pursuant to the authority given him, should be deemed acts of the master:" Bacon's Abridgment, Master and Servant. (7.) Bentham, in his Principles of Penal Law (vol. i. 383 of Works), puts the master's responsibility upon the following grounds: "The obligation imposed upon the master acts as a punishment, and diminishes the chances of similar misfortunes. He is interested in knowing the character and watching over the conduct of them for whom he is answerable. The law makes him an inspector of police, a domestic magistrate, by rendering him answerable for their imprudence." This seems the ground on which the rule of law can be justified.

APPENDIX B.

The following are the chief cases on the subject:—

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Goodman v. *Kennell* (1828), 1 M. & P. 241; 3 C. & P. 167. (Person occasionally employed by defendant as his servant took the horse of another when on defendant's

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McManus v. *Crickett* (1800), 1 East, 106. (See p. 286.)

Croft v. *Alison* (1821), 4 B. & Ald. 590. (See p. 286.)

Mackenzie v. *McLeod* (1834), 10

LIABILITY.

business; jury found that the horse was taken with defendant's implied consent or authority; defendant liable; Court refused a new trial.)

Gregory v. *Piper* (1829), 9 B. & C. 591. (See p. 277.)

Chandler v. *Broughton* (1832), 1 C. & M. 29. (Defendant sitting in a gig beside his servant, who was driving; horse ran away; action in trespass lay.)

Joel v. *Morison* (1834), 6 C. & P. 501. (See p. 284.)

Booth v. *Mister* (1835), 7 C. & P. 66. (See p. 277.)

Sleath v. *Wilson* (1839), 9 C. & P. 607; 2 M. & R. 181. (See p. 285.)

Giles v. *Taff Vale Ry. Co.* (1853), 2 E. & B. 822. (Plaintiff contracted to plant hedges for defendants; placed thorn plants in a piece of ground close to defendants' station. The general superintendent of the line refused to let them be removed; defendants liable in trover on the ground (Jervis, C. J.), that "it is the duty of the company, carrying on a business, to leave upon the spot some one with authority to deal on behalf of the company with all cases arising in the course of their traffic as the exigency of the case may demand.")

Patten v. *Rea* (1857), 2 C. B. N. S. 606; 3 Jur. N. S. 892; 26 L. J. C. P. 235. (The defendant's general manager had a horse and gig of his own. They were kept for him at his master's expense, and occasionally used in his master's business. In going with the authority of defendant upon the defendant's business with the horse and gig, he drove against plaintiff's horse. Immaterial that the manager was also going on private business.)

Goff v. *Great Northern Ry. Co.* (1861), 3 E. & E. 672; 30 L. J. Q. B. 148. (Plaintiff, at the instance of ticket-collector, defendants' in-

NO LIABILITY.

Bing. 385. (Housemaid lighted straw in order to clean a smoky chimney; master not liable on the ground that it was no part of her duty to clean the chimney.)

Lyons v. *Martin* (1838), 8 A. & E. 512; 3 N. & P. 509. (See p. 282.)

Lamb v. *Palk* (1840), 9 C. & P. 629. (See p. 286.)

Gordon v. *Rolt* (1849), 4 Ex. 365; 7 D. & L. 87; 18 L. J. Ex. 432. (Defendant, a contractor for certain works, employed subcontractor, whose men in the execution of the works but without the defendant's authority used the plaintiff's crane, and broke it; defendant not liable in an action of trespass.)

Eastern Counties Ry. Co. v. *Broom* (1851), 6 Ex. 314. (Servant of a railway company took plaintiff, a passenger, into custody for an alleged breach of a bye-law, &c., and carried him before a magistrate. The attorney of the company attended to prosecute; held no evidence of authority, on the ground that "it was not shown there had been any directions given to the (servants) in general to enforce the bye-laws and no evidence of ratification." This case seems not reconcilable with *Giles* v. *Taff Vale Co.* See *Goff* v. *Great Northern Ry. Co.*, and *Bank of New South Wales* v. *Owston*.)

Roe v. *Birkenhead Ry. Co.* (1851), 7 Ex. 36. (Plaintiff, a passenger, who refused to pay an additional fare, was taken into custody by a railway servant acting under the direction of the superintendent of the station; defendants not liable. There was doubt whether the servants were really the servants of the company; Alderson, B. But the case is doubtful.)

Mitchell v. *Crasweller* (1853), 22 L. J. C. P. 100; 13 C. B. 237. (See p. 285.)

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spector of police, and superintendent of line, charged with travelling without a ticket with intent to defraud. "We think it a reasonable inference that, in the conduct of their business, the company have on the spot officers with authority to determine, without the delay attending on convening the directors, whether the servants of the company shall or shall not, on the company's behalf, apprehend a person accused of this offence.")

Seymour v. *Greenwood* (1861), 6 H. & N. 359, and 7 H. & N. 355; 8 Jur. N. S. 24; 30 L. J. Ex. 189 and 327; 9 W. R. 785; 4 L. T. N. S. 833. (Defendant liable for the act of his servant, a guard of an omnibus, in forcibly removing passenger whom he believed to be drunk. "It is not convenient for the master personally to conduct the omnibus, and he puts the guard in his place; therefore if the guard forms a wrong judgment the master is responsible.")

Limpus v. *General Omnibus Co.*, (1862), 3 H. & C. 526. (See p. 280.)

Page v. *Defries* (1866), 7 B. & S. 137. (Defendants sent their barge under management of lighterman to a wharf to bring it alongside. At suggestion of foreman of wharf, the lighterman moved away from the wharf plaintiff's barge and fastened it to a pile in the river. The plaintiff's barge settled on a projection in bed of river and was injured.)

Lunt v. *London and North-Western Ry. Co.* (1866), L. R. 1 Q. B. 277; 35 L. J. Q. B. 105. (Gatekeeper inviting plaintiff to pass over a railway crossing.)

Wharton v. *Pearson* (1868), L. R. 3 C. P. 422. (Defendant, a contractor, employed men and horses; the men were allowed an hour for dinner, but not allowed to leave the horses. One of the men left his horse unattended; it ran away; held that it was

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Lygo v. *Newbold* (1854), 9 Ex. 302; 2 C. L. 449; 23 L. J. Ex. 108. (Plaintiff agreed to carry defendant's goods for her in his cart; defendant's servant, without defendant's authority, allowed plaintiff to ride on the cart; cart broke down, and the plaintiff injured.)

Murphy v. *Caralli* (1864), 3 H. & C. 462. (Bales of cotton stored insecurely in a warehouse by porters in the defendant's employment under the superintendence of J., the warehouse-keeper employed by the owner of warehouse; defendant not liable, the bales having been stowed under J.'s directions.)

William v. *Jones* (1865), 33 L. J. Ex. 297; 3 H. & C. 602. (See p. 287.)

Poulton v. *London and South-Western Ry. Co.* (1867), L. R. 2 Q. B. 534. (See p. 290.)

Storey v. *Ashton* (1869), L. R. 4 Q. B. 476; 38 L. J. Q. B. 223; 17 W. R. 727; 10 B. & S. 337. (A carman, sent with horse and cart by his employer, a wine-merchant, to deliver wine and bring back empty bottles; while returning, after business hours, he drove out of his way on business, not his master's; while he was so driving, the plaintiff was run over.)

Edwards v. *London and North-Western Ry. Co.* (May, 1870), L. R. 5 C. P. 445; 39 L. J. C. P. 241; 22 L. T. 656; 18 W. R. 834. (See p. 287.)

Walker v. *South Eastern Ry. Co.* (1870), L. R. 5 C. P. 640; 39 L. J. C. P. 346; 23 L. T. 14; 18 W. R. 1032. (See p. 287.)

Allen v. *London and Great Western Ry. Co.* (1870), L. R. 6 Q. B. 65; 40 L. J. Q. B. 55; 23 L. T. 612; 19 W. R. 127. (See p. 287.)

Foreman v. *Mayor of Canterbury* (1871), L. R. 6 Q. B. 214. (Defendants liable for negligence of

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properly left to the jury to say whether driver was acting within scope of his employment, and that they were justified in finding that he was.)

Van Den Enynde v. *Ulster Ry. Co.* (1871), 5 Ir. C. L. 6 and 328. (A clerk of the defendants, while issuing tickets, erroneously thought he had seen a ticket in the plaintiff's hand; charged him with having stolen a ticket; and detained him; defendants liable.)

Moore v. *Metropolitan Ry. Co.* (1872), L. R. 8 Q. B. 36; 42 L. J. Q. B. 23; 27 L. T. 579; 21 W. R. 145. (See p. 288.)

Bayley v. *Manchester and Stafford-shire Ry. Co.* (1872), L. R. 7 C. P. 415; 41 L. J. C. P. 278. (Plaintiff took his seat in defendants' train for Macclesfield; a porter of the defendants, supposing he was in the wrong train, violently pulled him out and injured him.)

Ward v. *General Omnibus Co.* (1873), 42 L. J. C. P. 265; 28 L. T. 850; affirmed, 27 L. T. 761; 21 W. R. 358. (Blow struck by driver of defendants' omnibus at driver of another omnibus; passenger in former injured; Court refused to set aside verdict for plaintiff on the ground that there was evidence of negligence in the course of employment.)

Burns v. *Poulsom* (1873), L. R. 8 C. P. 563; 42 L. J. C. P. 302; 29 L. T. 329; 22 W. R. 20. (Defendant, a stevedore, employed to ship rails, had a foreman, whose duty it was to carry the rails to the ship *after* the carman had brought them to the quay, and unloaded them. The foreman voluntarily got into the cart, and negligently unloaded some rails whereby the plaintiff was injured. Evidence for a jury that foreman was acting within scope of his duty so as to make stevedore liable. Brett, J., dissenting.)

Tebbutt v. *Bristol Ry. Co.* (1870), L.

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servants employed in repairing road.)

Cormick v. *Digby* (1876), 9 Irish C. L. 557. (Defendant's steward and herd got leave to go to a neighbouring town, on business of his own, with his master's horse and cart; it was afterwards agreed that he should bring home meat for the defendant; he drove the cart so negligently as to injure the plaintiff; Court refused to hold, as matter of law, defendant liable.

Rayner v. *Mitchell* (1877), L. R. 2 C. P. D. 357. (Defendant's carman, without his master's permission, took horse and cart out of his master's stable to deliver a child's coffin at a relative's house; he picked up two or three barrels at public-houses which defendant supplied. He drove against plaintiff's cart, and injured it.

Bank of New South Wales v. *Owston* (1879), L. R. 4 Ap. 270. (Action for malicious prosecution against a bank; prosecution instituted by bank manager; no implied authority from his position to institute prosecutions.)

Bolingbrooke v. *Local Board, Swindon* (1874), L. R. 9 C. P. 575; 43 L. J. C. P. 575; 3 L. T. 723; 23 W. R. 47. (See p. 282.)

Stevens v. *Woodward* (1881), L. R. 6 Q. B. D. 318. (See p. 286.)

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R. 6 Q. B. 73; 40 L. J. Q. B. 78; 23 L. T. 772; 19 W. R. 383. (The stations of defendants and two other railway companies were adjoining, and the passengers of the different companies passed from one to the other, the whole area being used in common. The plaintiff, while on the platform of the defendants on his way from the terminus of one of the companies to the booking office of another, was injured by the negligence of a porter of the defendants. Defendants liable, although plaintiff not a passenger of the defendants.)

Mackay v. *Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394. (Cashier of a bank who acted as manager, fraudulently induced plaintiff to accept certain bills; the defendants obtained the benefit of the bills.)

Venables v. *Smith* (1877), L. R. 2 Q. B. D. 279; 46 L. J. Q. B. 470; 36 L. T. 509; 25 W. R. 384. (Cab-owner liable for negligence of driver who, on his return to owner's mews, drove a little way from them to purchase snuff for himself.)

Edwards v. *Midland Ry. Co.* (1880), L. R. 6 Q. B. D. 287. (Action for malicious prosecution lies against a company.)

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SCOTCH CASES.

Linwood v. *Hathorn* (1817), 19 F. C. 327; I. S. App. 20. (The servants of defendant cut down a tree close to a public road; it fell upon and killed a man; the defendant not liable,—he being at the time absent, and having given no authority to cut the tree, nor apparently any authority to cut trees in that locality.)

Baird v. *Graham* (1852), 14 D. 615. (A master sent his servant with glandered horse to a fair at such a distance that the servant was obliged to put up for the night; action by owner of stable for loss of horses

SCOTCH CASES.

Waldie v. *Duke of Roxburgh* (1822), 1 S. 367. (R. obtained an interdict against W. from deepening part of the river Tweed; W.'s servant, in his master's absence, and against his express orders, committed a breach of the interdict; W. not responsible.)

Liability.	No Liability
Scotch Cases.	
and cattle which defendant's horse had infected with glanders.)	
Faulds v. *Townsend* (1861), 23 D. 437 ; 33 Jur. 224. (A manufacturing chemist, whose business consisted partly in boiling down the carcases of horses for manure, liable in the full value of a stolen horse, which had been purchased by his servant and used for the above purpose.)	
Gregory v. *Hill* (1869), 8 R. 282. (Defendant employed foreman and masons to build a house, and paid them wages ; he also entered into a contract with a carpenter for carpenter's work ; held that the defendant was liable for injuries to carpenter by the negligence of the masons.)	
American Cases.	American Cases.
Philadelphia and Reading Ry. Co. v. *Derby* (1852), 14 How. 468. (Defendants liable for collision caused by servants disobeying an express order.)	*Wright* v. *Wilcox* (1838), 19 Wend. 343. (Master not liable when a servant wilfully threw a lad off a waggon and drove over him.)
Carman v. *Mayor of New York* (1862), 14 Abb. 301. (Owner of land employed workmen to cut trees on his own land without employing a competent superintendent, or instructing them as to the boundaries ; defendant liable for trees of plaintiff which his workmen ignorantly cut down and removed.)	*Mali* v. *Lord* (1868), 39 N. Y. 381. (Defendant not liable for the act of his superintendent in arresting and searching the plaintiff, on a charge of stealing goods from the defendant.)
Althorf v. *Wolf* (1860), 8 Sm. 355. (See page 272.)	*Fraser* v. *Freeman* (1871), 43 N. Y. 566. Defendant, under claim of right, endeavoured to force his way, with the aid of his servant, into premises of plaintiff's intestate ; servant shot the latter in the struggle ; defendant not liable, in the absence of evidence that shot was fired with assent or by direction of defendant.)
Chapman v. *New York Central Ry. Co.* (1865). (Defendants liable for torts of servants when drunk.)	
Lannen v. *Albany Gas Light Co.* (1871), 44 N. Y. 459. (Defendants, informed that gas was escaping in the cellar of a house, sent servant to ascertain where the leak was ; the servant lighted a match for this purpose, and an explosion took place ; defendants liable.)	
Wolfe v. *Merseveau* (1859), 4 Duer	

Liability.	No Liability.
American Cases.	
473. (No defence that defendant's servant wilfully drove against plaintiff's waggon, if he did so in order to avoid greater peril, which it was the defendant's interest to avoid.)	
Railroad Co. v. *Hanning* (1872), 19 Wal. 649. (Contractor agreed to furnish the materials and labour for building a wharf; to do the work under the direction and supervision of the railway company's engineer and to his satisfaction; the company liable for the negligence of the contractor or his servants.)	

CHAPTER XXIX.

MASTER'S LIABILITY TO SERVANTS.

A MASTER is not liable at Common Law to his servants for the acts of fellow servants in the course of their employment.

This has been altered by the Employers' Liability Act of 1880, which is printed in the second part of this volume. But as the Common Law is still partly in force, it will be advisable to state what it was before the passing of that Act. The reasons assigned for the exemption above stated are very various. Sometimes it is put on the ground of general policy, and on the inexpediency of exposing a master to a multiplicity of actions (*a*). Sometimes the reason assigned is that a servant does, as an implied part of the contract between himself and his master, take upon himself the natural risks and perils incident to the performance of his services (*b*); or it is said that the liability of the master for the acts of the servant is an exception which ought not to be extended, and that the servant has no cause of action against his fellow servant because, "he has not stipulated for a right of action against his master if he sustains damage from the negligence of a fellow servant" (*c*). Perhaps the most generally accepted reason is that stated by Shaw, J., in *Farwell* v. *Boston Railroad Co.* (*d*). "The implied contract of the master does

(*a*) *Priestley* v. *Fowler* (1837), 3 M. & W. 1.

(*b*) *Morgan* v. *Vale of Neath Ry. Co.*, 33 L. J. Q. B. 260; 5 B. & S. 570; L. R. 1 Q. B. 149.

(*c*) Bramwell, B., in *Swainson* v. *the North-Eastern Ry. Co.* (1878), L. R. 3 Ex. D. 341; 47 L. J. Ex. 372; 38 L. T. 201; 26 W. R. 413.

(*d*) 4 Met. (Mass.) 49.

not extend to indemnify the servant against the negligence of anyone but himself; and he is not liable in tort, as for the negligence of his servant, because the person suffering does not stand towards him in the relation of a stranger, but is one whose rights are regulated, by contract express or implied."

Whatever be the true reason, it has been undisputed law since the decision of the Exchequer Court in *Priestley* v. *Fowler* in 1837 (*e*), that a master is not answerable to one servant for the conduct of another in the same common employment. How far this has been altered by legislation will be subsequently explained; for the present I state the Common Law. "The principle is," said Alderson, B., in *Hutchinson* v. *York, Newcastle & Berwick Railway Co.* (*f*), "that a servant, when he engages to serve a master, undertakes as between himself and his master, to run all the ordinary risks of the service; and this includes the risk of negligence upon the part of a fellow servant, whenever he is acting in the discharge of his duty as servant of him who is the common master of both."

It matters not that the work is dangerous if the dangers be incidental to the employment. No one is bound to enter or continue in employment in which he runs serious risk, and if he does, he must take things as he finds them (*g*).

The master is not the insurer of those whom he employs. He does not warrant the competency and care of his

(*e*) 3 M. & W. 1.

(*f*) (1850), 5 Ex. 352.

(*g*) See *Wigmore* v. *Jay* (1850), 5 Ex. 354; 19 L. J. Ex. 300. (Action by the administratrix of Wigmore under 9 & 10 Vict. c. 93; the deceased, a workman in the employment of the defendant, a master builder, had been killed by the fall of a scaffold, constructed under superintendence of defendant's foreman, who used an unsound pole; no cause of action.) *Seymour* v. *Maddox* (1851), 16 Q. B. 326; 20 L. J. Q. B. 327. (Action by a chorus singer against defendant, owner of a theatre; the plaintiff fell through a hole in the floor, owing to the want of light and fencing; no breach of duty shown.) This case is open to doubt. *Skipp* v. *Eastern Counties Ry. Co.* (1853), 9 Ex. 223. (A guard injured; evidence that the work was too much for the staff of the company; the servant had for several months acted as a guard, and had made no complaint; no liability.) *Couch* v. *Steel* (1854), 3 E. & B. 402; 23 L. J. Q. B. 121. (No implied obligation on the part of the owner of a ship towards a seaman that the ship shall be in a fit state to perform the voyage.) See, however, 39 & 40 Vict. c. 80, s. 5.

servant (*h*), though he will expose himself to an action if he employs those whose incompetency is known to him (*i*). The carelessness of a servant in the course of his duties which results in the injury of another gives no cause of action against their common employer. A licensed waterman and lighterman in the employment of a corn merchant is injured by the fall of a sack owing to the carelessness of one of the corn merchant's men in hoisting it (*k*); a miner is killed by the carelessness of an engineer who does not stop a cage when it emerges from the pit, but allows it to be drawn up to the scaffold (*l*); a workman engaged in erecting scaffolding falls, and is injured owing to the negligence of the foreman, who did not supply sufficient boards (*m*); a man employed in carpenter's work for a railway company is injured by the negligence of porters who shift an engine so that it strikes the scaffold on which he stands (*n*). In all these cases the injured persons or their representatives have at Common Law no redress against the employers on the ground that the negligence is that of fellow servants.

The servant whose negligence or misconduct is the cause of the injury may be the superior of the person injured, and the latter may be bound to obey his orders. He is not the less a fellow servant. "A merchant's clerk, though (as is frequently the case) the equal of his employer in social position, is, in the eye of the law, a fellow servant with the boy who sweeps out the store and lights the fire (*o*)."

In *Wilson* v. *Merry* (*p*) it was held to make no difference that the accident to men sinking a shaft arose from the

(*h*) *Seymour* v. *Maddox*, and Jervis, C.J., in *Tarrant* v. *Webb* (1856), 18 C. B. 797.

(*i*) See page 316.

(*k*) *Lovell* v. *Howell* (1876), L. R. 1 C. P. D. 161; 45 L. J. C. P. 387; 34 L. T. 183; 24 W. R. 672.

(*l*) *Bartonshill Coal Co.* v. *Reid* (1858), 3 Macq. 266.

(*m*) *Gallagher* v. *Piper* (1864), 16 C. B. N. S. 669; 32 L. J. C. P. 335.

(*n*) *Morgan* v. *Vale of Neath Ry. Co.* See note (*b*).

(*o*) Shearman and Redfield on Negligence, s. 100.

(*p*) (1868), L. R. 1 S. & D. 326. See also *Feltham* v. *England* (1866), L. R. 2 Q. B. 33; 7 B. & S. 676; *Howells* v. *Landore Steel Co.* (1874), L. R. 10 Q. B. 62.

negligence of a manager. When a third engineer, while turning a winch under the orders of the first, was injured by one of the handles coming off, the owners were not liable, though the handle came off in consequence of the negligence of the chief engineer in leaving the machinery in a defective state (*q*). [But see the Employers' Liability Act, secs. 2 and 3.]

The Courts have given a very wide signification to fellow servants. Two classes of cases must be distinguished: (1) The first consists of cases in which two persons are undoubtedly in the service of the same master; and the only question is whether they are engaged in common duties or so employed as to bring them within the rule. No authority goes so far as to say that the principle holds good between all servants employed by the same master. If a man owned a farm in the country and a warehouse in town, and if one of his farm servants happened to be injured by the negligence of a servant engaged in the warehouse, no one would say that the master would be freed from liability (*r*). A sailor on one ship would not be regarded as the fellow servant of a sailor on another, though both ships belonged to the same owner.

(*q*) *Searle* v. *Lindsay* (1861), 11 C. B. N. S. 429; 8 Jur. N. S. 746; 31 L. J. C. P. 106; 10 W. R. 89; 5 L. T. N. S. 427; also Willes, J., in *Gallagher* v. *Piper*; *Howell* v. *Landore Steel Co.* (1874), 10 L. R. Q. B. 62; 44 L. J. Q. B. 25; 23 W. R. 335.

(*r*) See Blackburn, J., in *Morgan* v. *Vale of Neath Ry. Co.*, 33 L. J. Q. B. 260; 5 B. & S. 570; L. R. 1 Q. B. 149; and Pollock, C.B., in *Abraham* v. *Reynolds* (1866), 5 H. & N. 143; Shearman and Redfield on Negligence, s. 101. The exemption does not extend to cases where the servant, at the time of the injury, is not acting in the service of his master. See Alderson, B., in *Hutchinson* v. *The York, Newcastle, & Berwick Ry. Co.*, 5 Ex. 343; 19 L. J. Ex. 296; the master is liable if the injury be due to a risk not incident to the service, *Mansfield* v. *Baddeley* (1876), 34 L. T. 696 (dressmaker bitten by a savage dog); or if the injury result from the master's negligence; *Warren* v. *Wildee* (1872), W. N. 87 (explosion of gas). But the above exemption exists in the event of the servant being injured while returning from work, if it be part of the contract that he is to be conveyed back, as in *Tunney* v. *Midland Ry. Co.* (1866), L. R. 1 C. P. 291. See as to this, Lord Brougham in *Brydon* v. *Stewart* (1852), 2 Macq. 30; also *Packet Co.* v. *M'Cue* (1873), 17 Wall, U. S. 508. (A. hired to assist in loading a boat belonging to defendant, but not in the general employment of defendant. After the job was over, and he was paid, he was crossing a gangway to go ashore, and was injured by the negligence of defendant's servants: a question for the jury whether the relation of master and servant had ceased at the time of the injury.)

But it is not necessary that servants should be doing the same or similar acts in order to come within the rule. "The driver and the guard of a stage coach, the steersman and the rowers of a boat," said Lord Cranworth in *Bartonshill Coal Co.* v. *Reid* (*s*), "the workman who draws the red-hot iron from the forge and those who hammer it into shape, the engine man who conducts a train, and the man who regulates the switches or the signals, are all engaged in common work" (*t*). The duties of two servants may have little connection, and may rarely bring them together. They may be of different grades; they may belong to different departments of the same factory, workshop, or establishment; their occupations may lie far apart (*u*); and they may be scarcely aware of each other's existence. They may be not the less fellow servants. An engineman who controlled the motions of a cage by which a miner was drawn to the surface was held to be a fellow servant of a miner engaged below (*x*). Carpenters employed by a railway company to do carpenter's work and porters engaged in shifting a locomotive (*y*); a miner and the underlooker of a mine (*z*); a workman and a certificated manager of a colliery appointed under sec. 26 of the Coal Mines Regulation Act, the 35 & 36 Vict. c. 76 (*a*); a labourer employed by a railway company in loading waggons with ballast and the guard of a train by which he was returning after doing his work (*b*), have been held to be fellow servants in such a sense that an injury committed to the one by the negligence of the other did not make the master answerable.

Lord Chelmsford, in *Bartonshill Coal Co.* v. *McGuire* (*c*), suggested that in general a satisfactory conclusion could be arrived at "by keeping in view what the servant must have

(*s*) See note (*r*).

(*t*) Compare remarks of Pollock, C.B., in *Abraham* v. *Reynolds*.

(*u*) Shaw, J., in *Farwell* v. *The Boston Ry. Co.*

(*x*) *Bartonshill Coal Co.* v. *Reid*.

(*y*) *Morgan* v. *Vale of Neath Ry. Co.* (1864), 5 B. & S. 570; L. R. 1 Q. B. 149; *M'Ewiry* v. *Waterford Ry. Co.* (1858), 8 Ir. C. L. 312.

(*z*) *Hall* v. *Johnson* (1865), 3 H. & C. 589.

(*a*) *Howell* v. *Landore Steel Co.* (1874), L. R. 10 Q. B. 62; 44 L. J. Q. B. 25; 23 W. R. 335.

(*b*) *Tunney* v. *Midland Ry. Co.* (1866), L. R. 1 C. P. 291; 12 Jur. 691.

(*c*) (1858), 3 Macq. 308.

known or expected to have been involved in the service which he undertakes,"—a test which, looking at the authorities, is scarcely comprehensive enough (*d*).

In *Charles* v. *Taylor* (*e*)—which involved the question whether one of a gang of "lumpers" or men engaged in unloading coal barges for the defendants, who were brewers, and servants of the defendants engaged in moving barrels, were fellow servants—the Common Pleas Division held that they were such; and Lord Justice Brett suggested the following formula: "When the two servants are servants of the same master, and where the service of each will bring them so far to work in the same place and the same time that the negligence of one in what he is doing as part of the work which he is bound to do may injure the other whilst doing the work which he is bound to do, the master is not liable to the servant for the negligence of the other." These formulæ seem to show that the test is whether or not the negligence of a fellow servant is a risk which may reasonably be expected to be incidental to the employment.

(2). A second class of cases consists of those in which persons are in one respect the servants of different masters, and yet for some purpose are regarded as if they were the servants of the same master. No doubt it is laid down that to exempt a master there must not only be a common service or employment, but also a common master. When a signalman engaged and paid by one company and wearing their uniform, but bound to attend also to the trains of another company, was killed by the negligence of an engine-driver in the service of the latter, it was held that they were not in a common employment (*f*). But the Courts have in some cases recognised the fact that a man may be, in a certain sense,

(*d*) The principle is thus stated by Blackburn, J., *Morgan* v. *Vale of Neath Ry. Co.*, 5 B. & S. 580: "I think that, whenever the employment is such as necessarily to bring the person accepting it into contact with the traffic of the line of a railway, risk of injury from the carelessness of those managing that traffic is one of the risks necessarily and naturally incident to such an employment, and within the rule."

(*e*) (1868), 3 C. P. D. 496.

(*f*) *Swainson* v. *North-Eastern Ry. Co.* (1878), L. R. 3 Ex. D. 341.

the servant of two masters, and they have treated as fellow-servants persons who, in one point of view, were not such, but were subject to different masters.

The first of these cases is *Wiggett* v. *Fox* (*g*), the facts of which were as follows: The defendants, who had contracted with the Crystal Palace Co. to erect a tower, made a sub-contract with M. and four other persons to do by piece particular portions of the work. The workmen of the sub-contractors were paid weekly by the defendants according to the time which they worked. The sub-contractors received from the defendant's foreman directions as to the execution of the piecework. The persons who contracted with the defendants to do piecework, signed printed regulations by which they were not at liberty to leave their employment until after they had completed their piecework, and had given a week's notice. While W., who was employed by M., one of the sub-contractors, was at work, a workman in the service of the defendants let fall a tool, which killed W. The jury found that W. was the servant of M. The Court of Exchequer held that the defendants were not liable, the deceased and the workman whose negligence caused the accident being common servants of the defendants. "Here both the servants were, at the time of the injury," said Alderson, B., "engaged in doing the common work of the contractors, the defendants; and we think that the sub-contractor and all his servants must be considered as being, for this purpose, the servants of the defendants whilst engaged in doing work, each devoting his attention to the work necessary for the completion of the whole, and working together for that purpose." In this connection may be mentioned *Murray* v. *Currie* (*h*). The defendant had entrusted the unloading of a vessel to a master stevedore; the plaintiff,

(*g*) (1856), 11 Ex. 832; 25 L. J. Ex. 188; 2 Jur. N. S. 855. This decision was questioned by Cockburn, C.J., in *Rourke* v. *White Moss Co.*; and see remarks by Channell, B., in *Abraham* v. *Reynolds*.

(*h*) (1870), L. R. 6 C. P. 24. This case turns, not so much on the doctrine of common employment as on the fact that Davis was not acting as defendant's servant; and it was not necessary to decide that the plaintiff and Davis were fellow servants.

a dock labourer, was employed by the stevedore and engaged with Davis, one of the crew of the ship, in unloading, by means of one of the winches of the vessel. The plaintiff was injured through the negligence of Davis in working the winch. Davis was paid by the defendants, but his wages were deducted from the stevedore's bills. All the unloading was under the control of the stevedore and his foreman. The stevedore provided the labour, and he would have had to get labour elsewhere if the ship had not found men. The shipowner selected such members of the crew as were to be employed in unloading, but the stevedore selected the work for them, and had control over them. The Court thought that the defendants were not liable, on the ground that Davis was not doing the work, and was not under the control, of the defendant. "The question here is," said Willes, J., "whether Davis, who caused the mischief, was employed at the time in doing Kennedy's work or the shipowner's. It is possible that he might have been the servant of both, but the facts here seem to negative that. The rule, out of which this case forms an exception, that a servant or workman has no remedy against his employer, for an injury sustained in his employ through the negligence of a fellow-servant or workman, is subordinate to another rule, and does not come into operation until a preliminary condition be fulfilled : it must be shown that if the injury had been done to a stranger, he would have had a remedy against the person who employed the wrongdoer . . . It was Kennedy's work he was employed upon, and under Kennedy's control."

"I apprehend it to be a true rule of law," said Brett, J. "that if I lend my servant to a contractor, who is to have the sole control and superintendence of the work contracted for, the independent contractor is alone liable for any wrongful act done by the person while so employed. The servant is doing, not my work, but the work of the independent contractor." *Rourke* v. *White Moss Co.* (*i*) ought here

(*i*) (1876), L. R. 1 C. P. D. 556 ; (1877), L. R. 2 C. P. D. 205. See

to be noticed. The defendants, owners of a colliery, were engaged in sinking a shaft, and for that purpose had employed among other workmen the plaintiff. After they had carried on the work for some time, they entered into a contract with one Whittle, to complete the sinking. Whittle was to provide all the labour, and the company were to put at the disposal of Whittle the necessary engine and to pay the engineer's wages. Lawrence, the engineer, was employed by the defendants and paid by them. Owing to his having fallen asleep and not stopped the engine at the proper time, the plaintiff was severely injured. Both the Common Pleas and the Court of Appeal thought that the plaintiff could not recover. In the former the decision was placed by Coleridge, C. J., Archibald, J., and Lindley, J., on the ground that both the plaintiff and Lawrence were the servants of Whittle. "He (Lawrence)," said Coleridge, C. J., "was originally, and may be now, in the employment of the defendants; but the work he had to do at the time of the accident was a necessary part of the work to be done under Whittle's contract. He was at that time working under the direction of Whittle, the working of the engine being a part of one operation, the whole of which was being done by Whittle. The plaintiff therefore was clearly the servant of Whittle, and Lawrence also was in one sense the servant of Whittle, inasmuch as he was working under his orders, and subject to his control, although his wages were paid by the defendants." "The real question," said Archibald, J., "is whether Lawrence was in the service of Whittle or in that of the defendant. For this purpose, I think he was in the service of Whittle." Cockburn, C. J. put his decision on the same grounds. But the judgments of

also *Murphey* v. *Caralli* (1864), 3 H. & C. 462; 34 L. J. Ex. 14; *Kimball* v. *Cushman*, 103 Mass. 194. (Defendant boarded with his father-in-law; his brother-in-law took care of the defendant's horses and carriage, and occasionally drove them; the brother-in-law, while riding to see about some hay which he had ordered for the defendant, injured the plaintiff; defendant liable on the ground that the brother-in-law was engaged in his business with his assent.)

Mellish, L. J. and Baggally, J. A., seem to go no further than deciding that at the time of the accident Lawrence was not acting as the servant of the defendants; and it is submitted that the case does not decide that the plaintiff was the fellow-servant of Lawrence. In his judgment Mellish, L. J., observes, "that the effect of this agreement was that the whole job was lent out to Whittle, but the engine was to assist him in doing the work, and the engineer, though remaining the general servant of the defendants and paid by them, was while working at this shaft, to act under the control and orders of Whittle. That, in my opinion, makes the acts of Lawrence, while working the engine, the acts of Whittle and not of the defendants. Lawrence's duty, according to the orders of Whittle, was to have stopped his engine at the proper time, and not doing this, he was negligent in not obeying the orders of Whittle, and this in law amounted to the negligent act of Whittle. It follows, therefore, that the defendants are not liable; and it is unnecessary to consider whether the plaintiff was the fellow-servant of Lawrence in Whittle's employ." Baggallay, J. A., thought the defendants not liable on the same ground, namely, that Lawrence was acting as servant to the contractor, and did not express any opinion upon the question of common employment.

Parallel, however, with these decisions, runs another series of cases, some of which may not be reconcileable with the above. The first one is *Abraham* v. *Reynolds* (*k*), decided in 1860 by the Court of Exchequer. The plaintiff, a servant of J. & Son, went to defendant's warehouse to fetch cotton for defendants, whose cotton was always carted by J. & Son. The bales were lowered by defendants' men into a lorry, and by the negligence of one of the defendants' men a bale fell and hurt the plaintiff. The Court thought the defence of common employment not open to the defendants because (according to Pollock, C. B.), though the workmen had a common object they had separate ends and for some purposes antagonistic

(*k*) (1860), 5 H. & N. 143. See also *Coombes* v. *Houghton*, 102 Mass. 211.

interests; because, apparently, (according to Martin, B.) the defendants were not masters of the plaintiff; and because (according to Watson, B.) they were "persons doing work for a common object but not under the same control or by the same orders." In *Warburton* v. *Great Western Railway* (*l*), decided in 1866, the Court of Exchequer took the view that a porter of the London & North Western Railway Co., and an engine-driver in the service of the defendants, were not fellow-servants within the meaning of the rule, though both companies used the station, which belonged to the London & North Western Co., and the servants of the defendants were subject to the rules of the London & North Western Railway Co. and to the control of a stationmaster, a servant of the latter. The consistency of this decision with *Wiggett* v. *Fox* is not apparent. In the subsequent case of *Swainson* v. *North Eastern Railway Co.* (*m*), which was decided in 1878, the Court of Appeal, reversing the Exchequer Division, held that an engine-driver of the defendants and a signalman of the Great Northern R. Co. were not fellow-servants in the following circumstances: The station of the defendants and that of the Great Northern Company abutted upon each other and were approached by parallel lines of rails. The plaintiff was a signalman engaged and paid by the Great Northern Company, and wearing their uniform. But his duty was to attend to the trains of both Companies. While an engine of the defendants was upon the lines of the Great Northern Company, the driver negligently ran over the plaintiff. The Court held that the plaintiff and the driver were not engaged in a common employment.

The Scotch Courts did not at first recognise the exemption of an employer from liability for the acts of his servants; and about two years after *Priestley* v. *Fowler* was decided, we find them acting on the principle that an employer owes reparation to one servant injured by the negligence of

(*l*) (1866), L. R. 2 Ex. 30.
(*m*) See note (*f*). For a review of most of these cases, *Turner* v. *Great Eastern Ry. Co.* (1875), 33 L. T. 431.

another (*n*). Indeed as late as 1852, in *Dixon* v. *Ranken* (*o*), the doctrine of the English decisions was rejected as contrary to the law of Scotland. In 1858, however, the House of Lords laid it down that the law of the two countries on this point was identical (*p*). Since that date the Scotch Courts have carried the exemption further than the English Courts have done. In *Woodness* v. *Gartness Mineral Co.* (*q*), a majority of seven judges (the Lord Justice Clerk dissenting) held that the representatives of a miner who was killed owing to the negligence of the defendants' underground manager, could not recover from the defendants, inasmuch as the miner, though the servant of a contractor engaged in sinking a shaft, and the manager had entered into "one organisation of labour for one common end." "A workman," it was said by the Lord President, "encounters and undertakes on entering a mine all the risks naturally incident to the work—a principle which seems to me necessarily to exclude all secondary responsibility. The whole persons engaged in a mine form one organization of labour for one common end (however different their functions may be) and are all subject to one general contract, exercised by the mine-owner, or those to whom his authority is delegated." No English decision, not even *Wiggett* v. *Fox*, goes so far as this case, which seems to carry to an illegitimate extent the theory of a fictitious undertaking; and some of the English cases—for example, *Turner* v. *Great Eastern Rail. Co.* (*r*)—are not reconcileable with the views of the Scotch judges.

(*n*) *Sword* v. *Cameron*, Feb. 13, 1839, 1 D. 439.

(*o*) 31 Jan., 1852; 14 D. 420.

(*p*) *Reid* v. *Bartonshill Coal Co.* (1868), 3 Macq. 266.

(*q*) Feb. 10, 1877, 4 R. 469, overruling *Gregory* v. *Hill*, 8 Macq. 282.

(*r*) (1875), 33 L. T. 431. (Defendants employed contractor to unload their coal-trucks at shoots and sideways constructed for that purpose. The contractor employed his own servants, among whom was the plaintiff. The plaintiff while so engaged was injured by the negligent shunting by the defendants' servants of an engine, which was bringing coal-trucks to the sideways and shoots; plaintiff entitled to recover, there being no common employment between the engine driver and the plaintiff.) See also *Bland* v. *Ross* (1860), 14 Moore P. C. 210. Notwithstanding the dictum of Pollock, C.B., in *Southcote* v. *Stanley*, 1 H. & N. 247, 250, and the decision in *Albro* v. *Jaquith*, 4 Gray, 99, there seems no good reason for supposing that one fellow-

As the reason generally given for the non-liability of a master for injuries sustained by servants through the negligence of fellow-servants is the existence of a tacit agreement on the part of the former to accept all the ordinary risks attending their service, it might seem to be proper to confine this exemption to cases in which a contract of service exists. This, however, has not been done. Volunteers are treated as if they were servants. A clerk in the employment of Messrs. Pickford, carriers, voluntarily assisted the servants of a railway company in turning a truck on a turn-table. By the negligence of one of the company's servants he was killed. Such were the main facts in *Degg* v. *Midland Rail. Co.* (*s*); and the Court of Exchequer came to the conclusion that the deceased by volunteering his services could not have any greater rights or impose greater duties on the defendants than would have existed if he had been a hired servant. It was urged that the plaintiff was a trespasser or wrongdoer. The cases of *Bird* v. *Holbrook* (*t*) and *Lynch* v. *Nurdin* (*u*) were cited in support of the contention that Degg, though a wrongdoer, could maintain an action. But the Court overruled this argument, on the ground that a man could not by his own wrong impose a duty. This decision received the approval of the Exchequer Chamber in the subsequent case of *Puller* v. *Faulkner* (*x*). There the plaintiff had, at the request of the defendants' servant, assisted him in putting bales of cotton into a lorry, and was injured while so doing. The Exchequer Chamber expressed the opinion that *Degg* v. *Midland Rail. Co.* was well decided. Erle, C. J., in delivering the judgment of the Court, said with respect to the rights of a volunteer, "Such an one cannot stand in a better position than those with whom he associates himself in respect of their master's liability: he can impose no greater liability upon the master

servant is not liable to another fellow-servant for damages to the latter by the negligence of the former.

(*s*) (1857), 26 L. J. Ex. 171; 1 H. & N. 773.

(*t*) (1828), 4 Bing. 628.

(*u*) (1841), 1 Q. B. 29.

(*x*) (1861), 1 B. & S. 800.

than that to which he was subject in respect of a servant in his actual employ." In this instance the plaintiff lent his assistance at the request of a servant who had no authority to employ. Had it been part of the regular course of business to do what the so-called volunteer did, and had he acted with reference to goods to be delivered to him, the difference would have been material. Thus, when a person who had sent a heifer by rail to Penrith Station assisted in shunting into a siding, with the assent of the station-master, the horse-box in which the heifer was, it was held that he was not a volunteer in the sense of the decision in *Degg* v. *Midland Rail. Co.*, and that he could recover from the defendants for the negligence of their servants (*y*). He only did for himself, with the permission of the Company, what they were bound by contract to do for him.

The exemption of masters has been curtailed by the Employers' Liability Act of 1880 (43 & 44 Vict. c. 42), which will be found printed in a subsequent chapter. Even, however, at Common Law there are important qualifications to the non-liability of a master.

A master is responsible for injuries to his servant by reason of his own negligence or that of his partner.

He will not be exonerated because he himself acts as a servant. In *Ashworth* v. *Stainwix & Walker* (*z*) the two

(*y*) *Wright* v. *The London and North-Western Ry. Co.* (1875), L. R. 10 Q. B. 298; 1 Q. B. D. 252; 45 L. J. Q. B. 570; 33 L. T. 830. This followed the previous decision. *Holmes* v. *North-Eastern Ry. Co.* (1869); L. R. 4 Ex. 254; (1871) 6 Ex. 123. (A consignee of a coal waggon went to it with the permission of the station master, and took some coal. Having then stepped down upon the flagged way, he was injured by one of the flags giving way; entitled to recover, though he was not unloading in the usual way.) See also *Wyllie* v. *Caledonian Ry. Co.* (1871), 9 M. 463. (A driver in employment of cattle dealer was engaged along with servant of defendants in putting his master's cattle into a truck at a siding; an engine, driven by one of defendants' servants, pushed a waggon against the truck; defendants liable.)

(*z*) (1861), 30 L. J. Q. B. 182; 7 Jur. N. S. 462; 3 E. & E. 701.

defendants were lessees of a coal mine and in partnership. One of them acted as banksman. A tram plate fell down the pit and injured the plaintiff. It was proved that the banksman's attention had been called to the loose state of the plate, and the jury found that he was guilty of negligence. The Court held that he was liable in respect of his personal negligence, and that the other defendant was liable as partner. The master is not bound to do his work himself. "He has not contracted or undertaken," says Lord Cairns in *Wilson* v. *Merry* (*a*), "to execute in person the work connected with his business," but "to select proper and competent persons to do so, and furnish them with adequate materials and resources for the work." But if a master choose to do his work in person, or if he personally interfere with the execution of work, he will incur responsibility to fellow-servants for his own negligence. He will not be regarded as a fellow-servant because he works with them (*b*).

A master is bound to exercise reasonable care in selecting servants.

He will be liable, not because his servants are incompetent but because he has been personally negligent in choosing them. The fact that a person known to be without experience was employed as an engine-driver, or in some other post requiring skill (*c*), or that a habitual drunkard was placed in a position of great responsibility, would be proof of negligence (*d*). No doubt, too, a master is bound to provide sufficient servants

(*a*) (1868), L. R. 1 S. & D. 326.

(*b*) *Mellors* v. *Shaw* (1861), 30 L. J. Q. B. 333. (One of the defendants, owners of coal mines, acted personally as superintendent; he took no pains to make the shaft safe, though it was pointed out to him that it was unsafe; defendants liable to a miner injured by the fall of a stone.)

(*c*) Shearman and Redfield on Negligence, 90.

(*d*) *Gilman* v. *Eastern Railroad Co.*, 10 Allen (Mass.) 233. (Evidence that defendants employed an habitual drunkard as switchman.)

for the work; though if a servant were to continue in a workshop or factory with full knowledge of this deficiency, he would be taken to have accepted the risk. In *Saxton* v. *Hawksworth* (*e*), the evidence was that five steam engines, some of them situated apart from each other, were attended to by only two men; one of the engines "ran away," or revolved too fast, and the plaintiff, who was a sheet roller in the defendants' works and had been such for three years, was thereby injured. The Exchequer Chamber held that, assuming the accident might have been prevented had more men been employed, he could not recover.

If machinery or plant have defects which might have been discovered by reasonable care on a master's part, the master will be liable for injuries to his servants by reason of such defects.

The Employers' Liability Act (42 & 43 Vict. c. 42) has introduced an important change, but it is necessary to ascertain what is the Common Law. No part of the subject is more obscure than the precise nature and extent of the liabilities of masters in regard to defects of machinery and plant. A humane employer, anxious for the safety of his workmen, would be vigilant even if they were careless, and would seek to save them from perils which they were ready to face. The Common Law, however, does not require an employer to do this. The question was considered by the House of Lords in *Paterson* v. *Wallace* (*f*), which was decided in 1854. This was a claim by the widow and children of a miner, who had been accidentally killed by the fall of a stone

(*e*) (1872), 26 L. T. 851; *Skipp* v. *Eastern Counties Ry. Co.* (1853), 23 L. J. Ex. 23.

(*f*) Paterson's Scotch Appeals, i. 389; 1 Macq. 748.

while working in a coal pit as a servant of the defendant. The counsel for the pursuer at the trial asked the Lord Justice Clerk to state to the jury the law thus: "If S., the defendant's manager, failed in his duty in timeously directing the stone in question to be removed, it would afford no defence to the action that Paterson continued to work after the orders for the removal of the stone had been ultimately given; and that if Paterson so continued to work in consequence of the directions of the roadsmen, the defenders are responsible for such directions." The judge refused so to direct the jury, and the Court of Session disallowed the exception. An appeal to the House of Lords took place. Lord Cranworth thought it clear that the Court below was wrong in disallowing the exception. "The law of Scotland is admitted on all hands to be this—and I believe it to be entirely conformable to the law of England also—that where a master is employing a servant in a work, particularly work of a dangerous character, he is bound to take all reasonable precautions that there shall be no extraordinary danger incurred by the workman (in Macqueen's Reports 'he is bound to take all reasonable precautions for the safety of that workman,' that is, one employed in a work of a dangerous character). A case has been put by Mr. Bovill of a rope going down to a mine. I take it, that in England, just as in Scotland, if the master of a man negligently put a rope that is so defective that it will break with the weight of a man upon it, he is responsible to the workman, just as he would be responsible for his negligence to a stranger. . . . I believe, by the law of England, just as by the law of Scotland, in the actual state of the case with which we have to deal here, a master employing servants upon any work, particularly a dangerous work of this sort, is bound to take care that he does not induce them to work under the notion that they are working with good and sufficient tackle, whilst he is employing improper tackle." Having pointed out that "in England, in Scotland,

and in every civilised country, one who rushes into danger himself cannot say, 'That is owing to your negligence,'" the Lord Chancellor added, "the pursuers must here make out that the deceased came to his death owing to the stone in question having been improperly left to remain where it was, being dangerous to the persons who should work in the mine; secondly, that the party has come to his death in consequence of that negligence, and not by his own carelessness." The question in this case, it will be observed, was whether the servant had been culpably careless. In the following year the same subject was further considered in *Brydon* v. *Stewart* (*g*), which was an action for damages at the instance of the wife and children of a miner who was struck on the head while ascending a shaft in a cage by a lump of coal which fell from above. It was not denied that the master was responsible for the state of the lining of the shaft; the only defence was that the accident happened when the deceased had no lawful excuse for going up the pit. This was overruled; and the master was held liable.

The same question arose in 1861 in *Weems* v. *Mathieson* (*h*). A workman had been injured by the fall of a cylinder which had been suspended between three shear poles by means of a chain. Lord Campbell and Lord Wensleydale pointed out that the contract of hiring implied no warranty of the perfect character of the machinery; and the former was careful to say that to make the defendants liable it must be shown that the weakness in the glands or bolts used in hoisting the cylinder "did not arise from any inherent secret defect, and that it was known, or might by the exercise of due skill and attention have been known, to the defendant, who was the employer of the deceased." "I take it to be perfectly clear," said Lord Wensleydale, "that in these cases there is no warranty. All that the master is bound to do is to provide machinery fit and proper for the work, and to take care to

(*g*) 2 Macq. 30; 1 Pat. 447. (*h*) 1 Pat. 1044; 4 Macq. 215.

have it superintended by himself or his workmen in a fit and proper manner." The same question had been discussed by the Courts of Common Law in *Wigmore* v. *Jay* (*i*), *Roberts* v. *Smith* (*k*), *Ormond* v. *Holland* (*l*), *Williams* v. *Clough* (*m*), and other cases collected in Appendix B. They established the principle that in order to support such an action, personal negligence must be brought home to the employer.

A master is plainly liable when, as in *Williams* v. *Clough* (*n*) and *Roberts* v. *Smith* (*o*), he supplies articles for use by his servants knowing them to be unsafe. Ignorance is not, however, always an excuse. A master is bound to use reasonable care, especially when the employment is a dangerous one, to provide good and sufficient tackle and machinery; and it will be a question for a jury looking to the whole facts to say whether he has failed in his duty. In *Murphy* v. *Phillips* (*p*) it was proved that the plaintiff, a stevedore in the defendant's service, was injured by reason of the breaking of a chain belonging to the defendant's ship. The chain was worn, it had been in use for seven years, and it had not been tested in the usual way during that time. The jury found that the chain was not in a fit state for the work; that the defendant did not know of the defects in the chain; but that he might have discovered them had he chosen to examine it. In these circumstances, though he took no part in the work, he was held to be liable. "He might," said Cleasby, B., "have appointed a fit and competent person expressly to superintend and see to the examining and testing of the chain, and had he done so he would of course have been himself exempt from liability; or he might

(*i*) (1850), 5 Ex. 354; 19 L. J. 300.

(*k*) (1857), 2 H. & N. 213; 3 Jur. N. S. 469; 26 L. J. Ex. 319.

(*l*) (1858), E. B. & E. 102.

(*m*) (1858), 3 H. & N. 258; 27 L. J. Ex. 325.

(*n*) See note (*m*).

(*o*) See note (*k*).

(*p*) (1876), 35 L. T. 477; also *Holmes* v. *Clark* (1862), 31 L. J. Ex. 356; *Holmes* v. *Worthington* (1861), 2 F. & F. 533. See, however, *Dudley* v. *Brown*, Law Times, June 25, 1881, p. 135, reversing the decision of Divisional Court. Some of the remarks in the judgments in *Murphy* v. *Phillips* appear to be not in accordance with other authorities.

have examined the state of the chain himself." *Davies* v. *England* (*q*) is an instructive case on this subject. The defendant employed the plaintiff in cutting up carcases which the former, it was alleged, knew to be diseased, but which the latter did not. The servant was injured by the virus in the meat, and the defendant was answerable. In this case two counts which did not allege knowledge by the defendant were held bad.

These cases did not distinctly determine whether the obligation on the part of the master to take care might be delegated to others. This question came before the House of Lords in 1868 in *Wilson* v. *Merry* (*r*), and Lord Cairns thus answered it. "The result of an obligation on the master personally to execute the work connected with his business, in place of being beneficial, might be disastrous to his servants, for the master might be incompetent personally

(*q*) (1864), 33 L. J. Q. B. 321; *Pollock* v. *Cassidy* (1870), 8 M. 615. (Plaintiff, while engaged in removing stones from bottom of a pier, injured by the fall of embankment at the foot of which he was working, and which had not been sufficiently sloped; the plaintiff not a skilled workman, acquainted with the proper angle at which embankment should be sloped; defendant liable.) *Metzger* v. *Hearn*, N. Y. S. C., American Law Review, 485 (1881). (Master liable to servant for accident caused by overloading floors of his building.) *Ochsenbein* v. *Shapley*, N. Y. C. of Ap. (1881), American Law Review, 619. (Defendants directed their foreman to test a boiler under pressure of 150 lbs. He tested it up to 200 lbs.; it burst, and injured the plaintiff and servant; defendants liable, even though the foreman's conduct was wanton and wilful.) At Common Law there is in a seaman's contract no implied warranty of seaworthiness as to a ship; see *Couch* v. *Steel*, 3 E. & B. 402, also Willes, J., in *Gallagher* v. *Piper*, 33 L. J. C. P. 331. This, however, is altered by the Merchant Shipping Act of 1876, s. 5, which says: "In every contract of service, express or implied, between the owner of a ship and the master, or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship, that the owner of the ship and the master, and every agent charged with the loading of the ship, or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the same: Provided, that nothing in this section shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending thereof to sea is reasonable and justifiable.")

(*r*) L. R. 1 S. & D. 326.

to perform the work. At all events, a servant may choose for himself between serving a master who does, and a master who does not attend in person to his business. But what the master is, in my opinion, bound to his servant to do, in the event of his not personally superintending and directing the work, is to select proper and competent persons to do so, and to furnish them with adequate materials and resources for the work. When he has done this he has, in my opinion, done all that he is bound to do, and if the persons so selected are guilty of negligence, this is not the negligence of the master; and if an accident occurs to a workman to-day, in consequence of the negligence of another workman, skilful and competent, who was formerly, but is no longer, in the employment of the master, the master is, in my opinion, not liable, although the two workmen cannot technically be described as fellow-workmen."

What, it may be asked, is the position of corporations which always act by servants? A railway company provides old and defective engines; its rolling stock is not renewed, or cheap and inferior plant is purchased; one of its servants is injured in consequence of the defective state of the plant. Is the company liable? The negligence, it may be said, is, in fact, the negligence of a fellow-servant, in respect of which the injured person has no remedy. On the other hand, it may be urged that if there be no redress, corporations which act by servants enjoy an exemption not possessed by persons who personally carry on their own business. This point arose in *Allen* v. *New Gas Co.* (*s*). The plaintiff, a servant of the defendants, was injured by the fall of certain gates on the defendants' premises. The gates had for some time been out of repair, and the attention of the defendants' manager, Farren, had been called to them, and he had promised to repair them. "The gates," said the Court, "were dangerous when shut, not dangerous when against the wall and wedged up. Now, either some workmen as such moved the gates, or the wind

(*s*) (1876), L. R. 1 Ex. D. 251; 45 L. J. Ex. 668; 34 L. T. 541.

did so, and then the workmen ought to have replaced them. It was, therefore, by the improper moving of the gates by a workman, or by their being left improperly open by the workmen, that the mischief happened. "But assuming it to have been the negligence of Farren, his negligence would, as before pointed out, be that of a fellow-servant, for which, according to the cases cited, the defendants would not be liable" (*t*).

Some American Courts have arrived at a different conclusion, and have decided that the knowledge of a servant, whose duty it is to make reports as to the state of machinery or plant, is the knowledge of the company. The rule is sometimes thus stated :—"The master cannot be held chargeable for any act of negligence on the part of the superior servant except in so far as such servant is charged with the performance of the master's duty to the servant" (*u*). The point came before the Supreme Court of the United States in *Hough* v. *Texas & Pacific Railway Co.* (*x*), in which the facts were these :—An engine-driver was killed in consequence of an engine being thrown off the track. This accident was due to defects in the cow-catcher ; defects due to the negligence of the company's master mechanic, who had full control over the engines, and who knew of the defects, and had promised they should be repaired. His competence was unquestionable, and it was urged that there was no liability, inasmuch as he was a fellow-servant of the deceased. The

(*t*) With the reasoning at p. 255 compare *Murphy* v. *Philips*. The fact is that the authorities are not at one as to this. Some judges seem to assume that a master cannot delegate his duty, to keep machinery, plant, &c., in a state of repair, "in the condition in which, from the terms of the contract, or the nature of the employment, the servant has a right to expect that it would be kept;" Cockburn, C.J., in *Clarke* v. *Holmes*, 7 H. & N. 944. "Why," asks Byles, J., in the same case, "may not the master be guilty of negligence by his manager, or agent, whose employment may be so distinct from that of the injured servant, that they cannot with propriety be deemed fellow-servants? And if a master's personal knowledge of defects in his machinery be necessary to his liability, the more a master neglects his business and abandons it to others, the less will he be liable."

(*u*) Wood's Master and Servant, 836.

(*x*) (1879), 10 Otto, 213.

Supreme Court, however, overruled this defence, observing, "Those, at least in the organisation of the corporation, who are invested with controlling or superior authority in that regard, represent its legal personality; their negligence, from which injury results, is the negligence of the corporation. The latter cannot, in respect of such matters, interpose between it and the servant, who has been injured, without fault on his part, the personal responsibility of an agent, who in exercising the master's authority, has violated the duty he owes, as well to the servant as to the corporation. To guard against misapplication of these principles, we should say that the corporation is not to be held as guaranteeing or warranting the absolute safety, under all circumstances, or the perfection in all its parts, of the machinery or apparatus, which may be provided for the use of employés. Its duty in that respect to its employés is discharged when, but only when, its agents, whose business it is to supply such instrumentalities, exercise due care, as well in their purchase originally, as in keeping and maintaining them in such condition as to be reasonably and adequately safe for use by employés." The Court also quoted, with approval, the ruling of a State Court in *Ford* v. *Fitchburg Railway Co.* (*y*), in which it was said, "The rule of law which exempted the master from responsibility to the servant for injuries received from the ordinary risks of his employment, including the negligence of his fellow-servants, does not excuse the exercise of ordinary care in supplying and maintaining proper instrumentalities for the performance of the work required. One who enters into the employment of another has a right to count on this duty, and is not required to assume the risks of the master's negligence in this respect. "The fact that it is a duty, which must always be discharged, when the employer is a corporation, by officers and agents, does not relieve the corporation" (*z*).

Expressions in favour of this view may be cited from

(*y*) 110 Mass. 241.

(*z*) But see *Warner* v. *Erie Ry. Co.*, 39 N. Y. 468.

English cases (*a*) ; but, on the whole, English authorities are opposed to it. It is clear that masters are not bound to see personally to their business ; they may delegate it to competent persons; and this would not be the case if they were answerable to their servants for any of the acts or omissions of fellow-servants. Nor do they stand towards servants in the position of persons who invite the public to visit a certain place, and who are assumed to have warranted that due care has been taken by the contractor whom they employ (*b*).

A servant has no cause of action against his master if his own negligence have contributed to the injury of which he complains.

This branch of the subject may be conveniently divided into two parts : (1) A servant may choose to work with the full knowledge that the machinery or plant which he uses is dangerously defective. If he does so, he cannot recover in the event of his being injured. The principle *Volenti non fit injuria* applies. A workman engaged in sinking a pit was injured by the fall of a tub of water which was attached to a rope by hooks, and was being drawn up by machinery. The defendant had provided a proper giddy or slide to be used to prevent the tub falling back into the pit, and had given orders that it should be used when *earth* was drawn up. The plaintiff knew what sort of hook was employed, and made no complaint as to it, though he had complained that the giddy was not used in the case of water. The Court held

(*a*) *Penhallow* v. *Mersey Docks Board* (1861), 33 L. J. Ex. 331 ; *Stiles* v. *Cardiff Steam Navigation Co.* (1864), 33 L. J. Q. B. 310 ; *Baldwin* v. *Casella* (1872), L. R. 7 Ex., p. 325 ; see remarks of Bramwell, B., at p. 326 ; *Applebee* v. *Percy* (1874), L. R. 9 C. P. 647.

(*b*) *Frances* v. *Cockrell* (1870), L. R. 5 Q. B. 184 and 501 ; *Hyman* v. *Nye* (1881), L. R. 6 Q. B. D. 683. See also *Tarrant* v. *Webb* (1856), 25 L. J. C. P. 261 ; 18 C. B. 797 ; *Potts* v. *Port of Carlisle Dock Co.* (1860), 2 L. T. N. S. 283 ; and *Balleny* v. *Cree* (1873), 11 M. 626. (Workman in a paper mill injured by machinery defective through negligence of manager ; master not personally negligent ; master not liable.)

that the action would not lie. He had acquiesced in the use of the hook; and the negligence, if any, in not using the giddy, was that of the plaintiff's fellow-servants (*c*).

In a subsequent case it was shown that the defendant, the proprietor and manager of a coal mine, knew that the rules, published under 17 & 18 Vict. c. 108, as to testing a rope by which the pitmen descended, were habitually violated. A servant of the defendant was killed by the breaking of the rope; and had the facts stood thus, the Court might have held the master liable. It was proved, however, that the deceased knew of the habitual violation of the rule, and also that on the morning on which the accident took place, he was told by the banksman that he had better test the rope, and that nevertheless he got into the cage without doing so. In these circumstances the defendant was not liable (*d*).

As Cockburn, C. J., observed in *Woodley* v. *Metropolitan Railway Co.* (*e*)—an action by a workman in the employment of a contractor engaged by the defendants who had to work in a dark tunnel, and who was injured after a fortnight—"If a man, for the sake of the employment, takes it or continues it with a knowledge of its risks, he must trust to himself to keep clear of injury." But knowledge of defects in machinery or dangers is not necessarily proof of acquiescence in them or readiness to face them. It is only "an ingredient of negligence," to cite the expression of Byles, J., in *Holmes* v. *Clark* (*f*). A servant who is injured by reasons of defective machinery will be entitled to recover if he is induced to remain at work by a promise on the part of his master that the defect will be remedied. It was no answer in *Holmes* v.

(*c*) *Griffiths* v. *Gidlow* (1858), 27 L. J. Ex. 405; 3 H. & N. 648.

(*d*) *Senior* v. *Ward* (1859), 1 E. & E. 385. Sometimes it is difficult to distinguish contributory negligence from wilful exposure to known risks. But the difference may be important in regard to the Employers' Liability Act, s. 2, sub-s. 3.

(*e*) L. R. (1877), L. R. 2 Ex. D. 384.

(*f*) (1861), 6 H. & N. 349; 7 H. & N. 937; 30 L. J. Ex. 135; 31 L. J. Ex. 356. This case has been much criticised, and some of the remarks of the Judges in the Exchequer Chamber have been questioned. See remarks of Bramwell, B., in *Britton* v. *Great Western Cotton Co.*, L. R. 7 Ex. 136.

Clarke—an action by a workman engaged in a cotton mill and injured while oiling certain unfenced parts of the machinery—that he had remained at work after the fencing of the machinery was broken. To the argument that he had voluntarily incurred the danger and was in the same position as if he had originally agreed to work with unfenced machinery, Cockburn, C. J., replied, "there is a sound distinction between the case of a servant who knowingly enters into a contract to work on defective machinery, and that of one who, on a temporary defect arising, is induced by the master, after the defect has been brought to the knowledge of the latter, to continue to perform his service under the promise that the defect shall be remedied." So in *Holmes* v. *Worthington* (*g*), it was no answer to an action by a servant injured by the breaking of a defective rope that he had used it with a knowledge of its defects; the master had promised to see to them, and the servant might have reasonably believed that they would be put right. On the same principle, if a master is guilty of a breach of statutory regulations for the protection of his workmen, and one of them continues to work with knowledge of this fact and is injured, he will not necessarily be disentitled to recover damages. *Britton* v. *Great Western Cotton Co.* (*h*) is the leading case upon this subject. A workman named Britton was employed by the defendants to grease the bearings between the fly and spur-wheel of a steam-engine. The wheel race in which the fly-wheel revolved was unprotected at the place where Britton was placed to do his work. On the sixth morning of his employment he was caught by the fly-wheel, and killed. The Court of Exchequer held that there was an unqualified duty on the part of the defendants under 7 Vict. c. 15, s. 25, to fence the edge of the wheel race. To the contention that Britton had voluntarily accepted the risk and that he was the author of his own misfortune, the Court replied that the jury had found him not guilty of contributory

(*g*) (1861), 2 F. & F. 533. (*h*) (1872), L. R. 7 Ex. 130.

negligence, and that the place was not necessarily and obviously dangerous.

Defects in machinery, or dangers connected with it, of which a master is or ought to be aware, may be latent even to adult servants. They may be obvious to persons of skill and experience, while invisible to others; and this ought to be considered by the jury in determining whether or not there has been contributory negligence or a willing acceptance of risks. In *Grizzle* v. *Frost* (*i*) a girl of sixteen years of age was set to work, without receiving instructions, at a machine for cording hemp; she was injured in putting, as directed by the foreman, hemp between the rollers. In charging the jury, Cockburn, C. J., said, "I am of opinion that if the owners of dangerous machinery, by their foreman, employ a young person about it, quite inexperienced in its use, either without proper directions as to its use or with directions which are improper, and which are likely to lead to dangers of which the young person is not aware, and of which they are aware, as it is their duty to take reasonable care to avert such danger, they are responsible for any injury which may ensue from the use of such machinery." In several American cases the principle is clearly recognised that there is a peculiar duty to provide for the safety of young or inexperienced persons, that dangers may be latent to persons of inexperience, and that it would be unreasonable to suppose that they agree to accept risks of the natures which they are ignorant. *Spelman* v. *Fisher Iron Co.* (*k*) is a case which would probably be followed here. The plaintiff was employed in blasting; he was injured by the premature explosion of a newly invented powder. He did not know its nature, but it was unfit and unsafe for the purpose for which he had been directed to use it. It was held that a right of action existed. This qualification appears to be recognised by Lord Cranworth, who in *Bartonshill Coal Co.* v. *Reid* says, "It may be that if a master employs inexperienced workmen, and directs them to act

(*i*) (1863), 3 F. & F. 623. (*k*) 56 Barb. N. Y. 151.

under the superintendence and to obey the orders of a deputy whom he puts in his place, they are not, within the meaning of the rule in question, employed in a common work with the superintendent (*l*)."

(2). If a servant be guilty of culpable negligence which has contributed to his injury, he cannot recover, even though the master has been guilty of negligence. Thus in *Senior* v. *Ward* (*m*) the defendant, though guilty of gross negligence, was not liable because the plaintiff, who had been injured by the breaking of a rope used for lowering the cage down the shaft of the pit, knew that the rope was not regularly tested, and because he had disregarded a warning given by the banksman that he had better examine the rope before he went down.

Some of the authorities seem to draw no distinction between the negligence of a child and that of an adult. For example, when a boy of sixteen was injured owing to an explosion, and there was evidence that the defendant's manager had allowed the plaintiff to do that which it was not his duty to do, and which it was dangerous for an inexperienced hand to do, the Court refused to hold the defendant liable (*n*). So in *Singleton* v. *Eastern Railway Co.* (*o*), the defendants were not liable for injury sustained by a child of three and a half years, who had strayed upon their line—though in this case it was not clear that the defendants were to blame. In *Mangan* v. *Atherton* (*p*) no action lay at the instance of a child who was injured by putting his fingers between the cog-wheels of a crushing machine, while another child turned the

(*l*) 3 Macq. 294. See also Lord Chelmsford's remarks at p. 311.

(*m*) (1859), 28 L. J. Q. B. 139.

(*n*) *Murphy* v. *Smith* (1865), 12 L. T. N. S. 605. In *Willetts* v. *Buffalo Ry. Co.*, 14 Barb. 558, it was held that a lunatic might be guilty of contributory negligence. Apparently a child cannot recover if the person in whose charge he is, is guilty of contributory negligence; *Waite* v. *North-Eastern Ry. Co.* (1858), E. B. & E. 719; 5 Jur. N. S. 936.

(*o*) (1859), 7 C. B. N. S. 287; *Abbott* v. *Macfie* (1863), 33 L. J. Ex. 177; *Wardlaworth* v. *Walker* (1873), 37 J. P. 52.

(*p*) (1866), L. R. 1 Ex. 239; 35 L. J. Ex. 161. See criticisms on this case in *Clark* v. *Chambers* (1878), L. R. 3 Q. B. D. 327. Compare *Campbell* v. *Ord*, Court of Session (1873), 1 R. 149.

handles—though in this case also it was not clear that the defendant was guilty of any negligence.

It is difficult, however, to believe that a master would not be liable if young persons were allowed to work in and about machinery, the dangers of which he did and they did not understand (*q*).

APPENDIX A.

THE principle decided by *Priestley* v. *Fowler* (1837), 3 M. & W. 1, is obscure. It was on a motion to arrest judgment, and it is uncertain whether the negligence was in over-loading a van or in not providing a proper van. The duty of the defendants as alleged in the declaration was "to use due and proper care that the said van should be in a proper state of repair, that it should not be overloaded, and that the plaintiff should be safely carried thereby." The judgment can scarcely be said to lay down any clear rule of law. It contains loose expressions and analogies, which are not strictly accurate. It seems to show that the difference between the obligations of one who employs a contractor and a master who employs a servant was not present to the Court. "Lord Abinger," says Lord Justice Brett, in his evidence before the Select Committee on Employer's Liability, "who had been one of the greatest advocates ever known at the bar, had an advocate's talent, which mainly consists in the invention of analogies, and there never was a more perfect master of that art than Lord Abinger, and he took it with him to the bench; and I think it may be suggested that the law, as to the non-liability of masters with regard to fellow-servants, arose principally from the ingenuity of Lord Abinger in suggesting analogies in the case of *Priestley* v. *Fowler*, where the Court stated the law thus: 'Where several persons are employed in the conduct of one common enterprise or undertaking, and the safety of each depends much on the care and skill with which each other shall perform his appropriate duty, each is an observer of the conduct of others, and can give notice of any misconduct, incapacity, or

(*q*) *Lynch* v. *Nurdin* (1841), 1 Q. B. 29, where the question whether a child could be guilty of contributory negligence was decided to be a question of fact for the jury. (Defendant left his horse and cart in street unattended; plaintiff, a child of seven years of age, got upon cart in play, and another child led the horse; plaintiff injured; defendant liable though plaintiff a trespasser, and had contributed to mischief.) See remarks in *Lygo* v. *Newbold* (1854), 9 Ex. 302.

neglect of duty, and leave the service if the common employer will not take such precautions and employ such agents as the safety of the whole party may require. By these means the safety of each will be made more effectually secured than could be done by a resort to the common employer for an indemnity in case of loss by the negligence of each other.'" The doctrine was clearly laid down in America, in 1842, in *Farwell* v. *Boston & Worcester Cor.*, 4 Met. 49. The first English case in which it is distinctly stated was *Hutchinson* v. *York, Newcastle, and Berwick Ry. Co.*, 19 L. J. Ex. 296 ; 5 Ex. 343, decided in May, 1850. The doctrine was also affirmed in *Wigmore* v. *Jay* (22 May, 1850), 19 L. J. Ex. 300 ; 5 Ex. 354 ; *Seymour* v. *Maddox* (1851), 20 L. J. Q. B. 327 ; 16 Q. B. 326 ; and *Skipp* v. *Eastern Ry. Co.* (1851), 9 Ex. 223 ; 23 L. J. Ex. 23.

The doctrine has never been applied except to acts of negligence, and the like. It is clear that it has no application to risks which are not incidental to the service. See *Mansfield* v. *Baddeley*, 34 L. T. 696.

APPENDIX B.

The following are the chief cases as to Common Employment:—

FELLOW SERVANTS.

Hutchinson v. *York and Newcastle Ry. Co.* (1850), 5 Ex. 353. (Servant of defendants and engine-driver of train in which he was riding in discharge of his duty.)

Wigmore v. *Jay* (1850), 5 Ex. 343 ; 19 L. J. Ex. 300. (See p. 303.)

Wiggett v. *Fox* (1856), Ex. 832. (See p. 308.)

Degg v. *Midland Ry. Co.* (1857) ; 1 H. & N. 773 ; 26 L. J. Ex. 171. (See p. 314).

Senior v. *Ward* (1859), 1 E. & E. 385. (Pitman and banksman of a colliery.)

Searle v. *Lindsay* (1861), 31 L. J. C. P. 106 ; 11 C. B. N. S. 429 ; 10 W. R. 89. (See p. 305.)

Potter v. *Faulkner* (1861), 1 B. & S. 800 ; 8 Jur. N. S. 259 ; 31 L. J. Q. B. 30 ; 10 W. R. 93. (See p. 314.)

Waller v. *South-Eastern Ry. Co.* (1863), 32 L. J. Ex. 205 ; 9 Jur. N. S. 501 ; 2 H. & C. 102 ; 8 L. T. 325 ; 11 W. R. 731. (Railway guard and ganger of plate-layers.)

Gallagher v. *Piper* (1864), 16 C. B. N. S. 669 ; 33 L. J. C. P. 329. (See p. 304.)

Lovegrove v. *London, Brighton and South-Coast Ry. Co.* (1864), 16 C. B. N. S. 669 ; 33 L. J. C. P. 329. (Plaintiff, a labourer, in the service of defendants, employed in filling trucks with ballast ; injured by the negligence of another servant in placing insecurely temporary rails.)

Morgan v. *Vale of Neath Ry. Co.* (1864), L. R. 1 Q. B. 149; 35 L. J. Q. B. 23; 13 L. T. N. S. 564; 14 W. R. 144; 5 B. & S. 570; 10 Jur. N. S. 1074; 33 L. J. Q. B. 260. (See p. 306.)

Hall v. *Johnson* (1865), 3 H. & C. 589; 34 L. J. Ex. 222; 13 W. R. 411; 11 L. T. N. S. 779. (See p. 306.)

Murphy v. *Smith* (1865), 12 L. T. N. S. 605. (Plaintiff, a boy of tender years, and a person who managed the works in the absence of the manager.)

Feltham v. *England* (1866), L. R. 2 Q. B. 33; 36 L. J. Q. B. 14; 7 B. & S. 676; 15 W. R. 151. (Plaintiff, a workman, in the employment of maker of locomotive engines, and foreman of the workshop, his superior, fellow servants; plaintiff injured by the giving way of piers supporting a tramway and travelling-crane; defendant not liable, there being no evidence of personal negligence.)

Tunney v. *Midland Ry. Co.* (1866), L. R. 1 C. P. 291. (See p. 306.)

Murray v. *Currie* (1870), L. R. 6 C. P. 24. (See p. 308.)

Howells v. *Landore Siemens Steel Co.* (1874), L. R. 10 Q. B. 62. (See p. 306.)

Lovell v. *Howell* (1876), L. R. 1 C. P. D. 161; 45 L. J. C. P. 387. (Plaintiff, a licensed waterman and lighterman employed by defendant, a warehouse-keeper, at weekly wages, to moor and unmoor barges; he was in the habit of passing through the warehouse on the way to manager's office to receive orders or when sent for; being sent for, he was on his way to the office, and he was knocked down by a sack of grain through the negligence of defendant's servants in hoisting goods.)

Rourke v. *White Moss Co.* (1876), L. R. 1 C. P. D. 556; 2 C. P. D. 205. (See p. 309.)

Conway v. *Belfast Ry. Co.* (1877), 11 Ir. C. L. 345. (General traffic manager and milesman. Exchequer Chamber affirming decision of Common Pleas.)

Charles v. *Taylor* (1878), L. R. 3 C. P. D. 492; 38 L. T. 773; 27 W. R. 32. (Plaintiff, hired by A. to assist in unloading a barge at the wharf of defendants, who were brewers. Plaintiff and A., with other men, formed a gang, which was paid by defendants at 1*s.* 9*d.* a ton; the money to be paid to one of the men and distributed among the others. Defendants alone might dismiss plaintiff. A servant of the defendants engaged in moving barrels negligently let one of them slip, and plaintiff was injured. A. held to be a foreman and not a contractor, and plaintiff and A. fellow-servants.)

Not Fellow Servants.

Vose v. *Lancashire and Yorkshire Ry. Co.* (1858), 2 H. & N. 728, N. S. 364; 27 L. J. Ex. 249. (Plaintiff, representative of deceased in service of East Lancashire Ry. Co., while at work in a station in the joint occupation of that company and the defendant company, killed by an engine belonging to the latter, which was being shunted. The persons employed in shunting joint servants of the two companies, but the engine-driver and the persons employed in the same way as the deceased were separate servants. The accident occasioned by defects in the rules of the station.)

Abraham v. *Reynolds* (1860), 5 H. & N. 143; 6 Jur. N. S. 53; 8 W. R. 181. (See p. 311.)

Fletcher v. *Peto* (1862), 3 F. & F. 368. (Plaintiff engaged by wharfinger

to land bags of guano and carry them to warehouse to be piled there by day-labourers; plaintiff injured by the fall of some of the bags, which had been negligently piled. The jury held that the plaintiff was engaged in separate work from that of defendant's men.)

Cleveland v. *Spiers* (1864), 16 C. B. N. S. 399. (A mere passer by being asked by a workman to give information as to mode of making a hole in a gas pipe; not a volunteer assistant, within *Degg* v. *Midland Ry. Co.*)

Warburton v. *Great Western Ry. Co.* (1866), L. R. 2 Ex. 30; 36 L. J. Ex. 9; 4 H. & C. 695; 15 W. R. 108. (Plaintiff, a porter in the service of the London and North-Western Ry. Co., at their Manchester station, which was used by the defendants' Company, injured by the negligence of an engine-driver in the service of the defendants' company; the defendants' servants, when within the station were subject to the rules of the London and North-Western Ry. Co. Defendants liable.)

Smith v. *Steele* (1875), 32 L. T. N. S. 195; 44 L. J. Q. B. 60. (Pilot engaged by defendants under the compulsory clause of Merchant Shipping Act, 1854, and shipowner's servants.)

Turner v. *Great Eastern Ry. Co.* (1875), 33 L. T. 431. (See p. 313.)

Wright v. *London and North-Western Ry. Co.* (1876), 45 L. J. Q. B. 570; L. R. 10 Q. B. 298; L. R. 1 Q. B. D. 252. (See p. 315.)

Swainson v. *North-Eastern Ry. Co.* (1878), L. R. 3 Ex. D. 341; 47 L. J. Q. B. 372. (See p. 312.)

SCOTCH CASES.

Fellow Servants.

Reid v. *Bartonshill Coal Co.* (1858), 20 D. 13; 3 Macq. 266; Paterson, App. I., 785. (See p. 306.)

Wilson v. *Merry* (1868), L. R. 1 S. & D. App. 326. (Miner and general manager of mine fellow-servants, though latter had been guilty of negligence before the former entered the service of the plaintiff.)

Macfarlane v. *Caledonian Ry. Co.* (6 Dec. 1867), 6 Macq. 102. (A railway labourer and an inspector.)

Leddy v. *Gibson* (Jan. 1, 1873), 11 M. 304. (Sailor and captain of a merchant vessel.)

Not Fellow Servants.

Clark v. *McLaren* (Nov. 2, 1871), 10 M. 31. (Plaintiff employed in a chemical work; engaged by master to move under the manager of the chemical department a roof which had been injured; plaintiff hurt by the falling in of roof. Held that the doctrine of common employment did not apply, as neither workman nor manager engaged in his proper work.)

Adams v. *Glasgow and South-Western Ry. Co.* (Dec. 7, 1875), 3 R. 215. (A., employed as fireman by the Caledonian Ry. Co., killed on line of defendants, over which the Caledonian Ry. Co. had running powers, by the negligence of a clerk in the service of defendants.)

AMERICAN CASES.

Fellow Servants.

Hard v. *Vermont Central Ry. Co.*, 32 Vt. 473. (Mechanics in machine shop of defendants, and servants in charge of the trains.)

Sherman v. *Rochester Ry. Co.*, 17 N. Y. 153. (A brakesman of a train and engineer or conductor who has directed it to be run at an unsafe speed.)

Gilman v. *Eastern Ry. Co.*, 92 Mass. 233. (Carpenter employed by defendants; part of his duty to travel to and from his place of work on defendants' line. Fellow-servant of pointsman.)

Johnson v. *Boston*, 118 Mass. 114. (See p. 48.)

Holder v. *Fitchburg Railroad*, 129 Mass. 268. (A brakesman of a train and workmen employed in widening the railway.)

The following are some of the chief decisions relative to the duty of masters in regard to machinery and plant:—

Master Not Liable.

Seymour v. *Maddox* (1851), 20 L. J. Q. B. 327; 16 Q. B. 326. (See p. 303.)

Skipp v. *Eastern Counties Ry. Co.* (1853), 9 Ex. 223; 23 L. J. Ex. 23. (Plaintiff employed to attach carriages to locomotive; defendants did not employ a sufficient number of men; but plaintiff had worked several months without any complaint.)

Dynen v. *Leach* (1857), 26 L. J. Ex. 221. (Defendant, from motives of economy, substituted for the usual and safest mode of lifting sugar moulds a clip. The deceased, a labourer in the employment of defendant, fastened the clip, which slipped, so that a mould fell, and killed the deceased. No case to go to the jury; the labourer having known all the circumstances, and having voluntarily used the machinery.)

Ormond v. *Holland* (1858), E. B. & E. 102. (Defendants, builders, and plaintiff in their employment as bricklayer; plaintiff injured by the breaking of a round in a ladder. "There being no evidence of personal negligence, either by interference in the working or in hiring the servants, or in choosing the implements." Defendants not liable.)

Alsop v. *Yates* (1858), 27 L. J. Ex. D. 156. (Defendants set up a hoarding which projected too far into the street; a heavy machine was put between the hoarding and building; a ladder upon which plaintiff was, near it; plaintiff had complained of the position, and the defendant had said that it was dangerous and would be altered. A cart ran against the hoarding, and the machine fell upon the plaintiff, and knocked him down. Defendant not liable because, *inter alia*, the plaintiff continued working with full knowledge.)

Griffiths v. *Gidlow* (1858), 27 L. J. Ex. 404. (See p. 325.)

Senior v. *Ward* (1859), 1 E. & E. 385. (See p. 329.)

Riley v. *Baxendale* (1861), 6 H. & N. 445; 30 L. J. Ex. 87; 9 W. R.

347. (Declaration by administratrix that J. R. was servant of the defendants on the terms that they would take due and ordinary care not to expose the said J. R. to extraordinary risk and danger in the course of his employment; yet the defendant did not take due and ordinary care not to expose, &c. No such contract could be implied from ordinary contract of service.) *Potts* v. *Port of Carlisle Ry. Co.*, 2 L. T. N. S. 282.

Ogden v. *Rummens* (1863), 3 F. & F. 751. (Workmen employed in shoreing up arch, and injured by falling in of it; defendants, not having knowledge or reasonable means of knowledge of the danger, not liable.) See also *Tarrant* v. *Webb* (1856), 5 L. J. C. P. 51.

Brown v. *Accrington Cotton Co.* (1865), 3 H. & C. 511; 34 L. J. Ex. 208; 13 L. T. N. S. 94. (Defendants erected a mill by contracts made with different persons; appointed clerk of works to superintend building; plaintiff, employed by clerk of works, injured by fall of floor. Defendants not liable, there being no evidence of personal negligence on the part of defendants or personal interference.)

Saxton v. *Hawkworth* (1872), 26 L. T. 851. (See p. 317.)

Allen v. *The New Gas Co.* (1876), L. R. 1 Ex. D. 251; 45 L. J. Ex. 668; 34 L. T. 541. (See p. 322.)

Maddicks v. *G. N. Ry. Co.* (1877), W. N., p. 251.

Liable.

Roberts v. *Smith* (1857), 2 H. & N. 213; 3 Jur. N. S. 469; 26 L. J. Ex. 319. (Plaintiff, a bricklayer, in the employment of defendants, injured by the fall of a scaffold; the materials for the scaffold were defective; one of the labourers engaged in constructing the scaffold having tried the logs, one of the defendants said, "They will do very well; don't break any more." A new trial, on the ground of evidence of personal interference and negligence by master). See also *Webb* v. *Rennie* (1865), 4 F. & F. 608.

Williams v. *Clough* (1858), 3 H. & N. 258. (Defendant ordered plaintiff to use a ladder, which he knew to be unsound; plaintiff injured; defendant liable.)

Caswell v. *Worth* (1856), 5 E. & B. 849. (See p. 479.)

Doel v. *Sheppard* (1856), 5 E. & B. 856. (See p. 479.)

Murphy v. *Phillips* (1876), 35 L. T. 477; 24 W. R. 647. (See p. 320.)

Holmes v. *Worthington* (1861), 3 F. & F. 533. (See p. 327.)

Davies v. *England* (1864), 33 L. J. Q. B. 321. (See p. 321.)

Holmes v. *Clarke* (1862), 31 L. J. Ex. 356. (See p. 327.)

Watling v. *Oastler* (1871), L. R. 6 Ex. 73; 40 L. J. Ex. 43; 23 L. T. 815; 19 W. R. 388. (Declaration by plaintiff as administratrix of G. W. for that it was necessary for G. W. in the course of his employment to get into a certain machine which was constructed defectively and in an unsafe manner, as the defendants well knew. While G. W. was so employed the machine was suddenly put in motion, and G. W. injured. Not necessary to aver that G. W. was ignorant of the defective state of machine.)

Britton v. *Great Western Cotton Co.* (1872), L. R. 7 Ex. 130. (See p. 327.)

AMERICAN CASES.

Liable.

Huddlestone v. *Lowell Machine Shop*, 106 Mass. 282. (Plaintiff employed as a watchman in machine shop of defendants. A portion of the floor over which he had to pass in the discharge of his duty was in a state of decay; the defendant knew or might have known of the dangerous condition of the floor; Court refused to say he was guilty of negligence; a question for the jury whether plaintiff was negligent in remaining with his knowledge that the floor was decayed.)

Ryan v. *Fowler*, 24 N. Y. 410. (Plaintiff, a girl of fourteen, employed by defendant in his mill; over the water wheel was a privy, supported by wooden scantling. The timber had become somewhat rotten; and there was evidence that some repairs ordered by defendant had weakened the support; plaintiff injured. Defendant liable.)

Laning v. *N. Y. Central Ry. Co.*, 49 N. Y. 521. (Defendant retained in his service a foreman, who was drunk and who had employed an unskilled workman to superintend scaffold, liable for injuries caused by its defects.)

Not Liable.

Faulkner v. *Erie Railroad Co.*, 49 Barb. N. Y. 324. (Plaintiff, a servant of defendants, injured by the breaking down of a bridge due to dry-rot in its timbers; no personal negligence. Defendants not liable.)

PART II.

STATUTE LAW.

CHAPTER I.

SUNDAY OBSERVANCE.

THE 29 Charles II. c. 7 (1676) (an Act for the better observation of the Lord's Day, commonly called Sunday), is the only statute on this subject to which it is necessary to refer. Section 1 declares :—

"That no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day, or any part thereof (works of necessity and charity only excepted); and that every person being of the age of fourteen years or upwards offending in the premises, shall for every such offence forfeit the sum of five shillings; and that no person or persons whatsoever shall publicly cry, show forth, or expose to sale any wares, merchandises, fruits, herbs, goods or chattels whatsoever upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth or exposed to sale."

The penalties under this Act are rarely applied (*a*). But it is occasionally essential to know whether contracts made on Sunday are illegal. The Courts have attached important limitations to the scope of the statute. The words "other person whatsoever" have not been read literally. Thus in *Sandiman* v. *Breach* (*b*), it was held that they did

(*a*) See 34 & 35 Vict. c. 87, continued by 42 & 43 Vict. c. 67, restricting proceedings under 29 Chas. II. c. 7.

(*b*) (1827), 7 B. & C. 96, 9 D. & R. 976 (The Act does not include contracts to carry passengers by coach on a Sunday; consequently action lies against owner

not include the owner and driver of a stage-coach, on the general principle of construction, that where general words follow particular words they are to be read as applicable to persons or things *ejusdem generis*. When an attempt was made to bring within the Act farmers who employ labourers on a Sunday, the Court of Queen's Bench (*c*) decided that a farmer who employed labourers to cart hay, although he himself worked, was not liable to the penalties of the Act. The strange result follows, that an agricultural labourer who works on Sunday may be punished, while the farmer who employed him, and who perhaps took part in the work, cannot be punished.

The Courts have also limited the application of the statute to cases in which contracts are made "in the course of the ordinary calling." This was the construction adopted in *Drury* v. *Defontaine* (*d*). There the question was, whether a sale of a horse on a Sunday, not in the course of the ordinary calling of the vendor, was void so as to disable him from recovering the price. The Court decided that it was not void. Though questioned by Park, J., in *Smith* v. *Sparrow* (*e*), this construction of the statute is now settled. Accordingly, a contract of hiring for a year made between a farmer and a labourer is not affected by the statute, hiring not being, it was said, one of those things which the ordinary duties of a farmer require him to perform (*f*). Such also was the view of the Court of Exchequer with respect to an agreement by an attorney, whereby he agreed to become personally liable in respect of a debt owing by a client (*g*). On the other

of stage-coach for refusing to take plaintiff as a passenger on Sunday). See, on the other hand, *Ex parte Middleton* (1824), 3 B. & C. 164, 4 D. & R. 824, where a driver of a *van* was held to be under 3 Car. I. c. 4.

(*c*) *R.* v. *Silvester* (1864), 33 L. J. M. C. 79; 10 Jur. N. S.; 12 W. R. 375; 9 L. T. N. S. 682; 4 B. & S. 927; "other persons then must mean other persons not quite a tradesman, labourer, &c.," Blackburn, J.

(*d*) (1808), 1 Taunt. 131. See also *Triggs* v. *Lester* (1866), L. R. 1 Q. B. 259; 14 W. R. 279; 13 L. T. N. S. 701.

(*e*) (1827), 4 Bing. 84; 2 C. & P. 544; 12 Moore, 266 (action will not lie upon a contract made and completed on a Sunday).

(*f*) *Rex* v. *Whitnash* (1827), 7 B. & C. 596; 1 M. & R. 452.

(*g*) *Peate* v. *Dicken* (1834), 1 C. M. & R. 422; 5 Tyrw. 116; *Norton* v. *Powell* (1842), 4 M. & G. 42 (the giving by one tradesman to another

hand, a horsedealer cannot maintain an action upon a contract, even if made privately, for the sale and warranty of a horse, provided it were entered into on a Sunday (*h*).

Only one penalty can be incurred in the course of a day (*i*).

In some American cases it has been held that if a master forces a servant to labour on a Sunday it is a good cause for leaving the service (*k*). This would appear to be the case here also. In a Scotch case (*l*), the House of Lords laid it down that an apprentice to a barber, who was bound not to absent himself from his master's business on holidays or week-days, late hours or early, without leave, and who went away on Sundays without leave, and without shaving his master's customers, could not be lawfully required to attend his master's shop on Sundays; the ground of the decision was that shaving was not a work of necessity or mercy.

tradesman of a guarantee for the faithful services of a traveller is not an act done in his ordinary calling).

(*h*) *Fennell* v. *Ridler* (1826), 5 B. & C. 406; 8 D. & R. 204. See also as to "ordinary calling," *Wolton* v. *Gavin* (1850), 16 Q. B. 48 (enlistment of a soldier by a recruiting officer not within the Act, and not invalid by reason of taking place on a Sunday); *Scarfe* v. *Morgan* (1838), 4 M. & W. 270 (sending a mare to a farmer to be covered by a stallion not within farmer's ordinary calling); *Bloxsome* v. *Williams* (1824), 3 B. & C. 232; 5 D. & R. 82 (A. not knowing that B. was a horse-dealer, made a verbal bargain with him on a Sunday for purchase of a horse; assuming the contract to be void, the purchaser was ignorant of the fact that the vendor was exercising his ordinary calling on the Sunday, the former was therefore entitled to recover the price for breach of warranty).

(*i*) *Crepps* v. *Durden* (1770), 2 Cowp. 640.

(*k*) *Coin* v. *St. Germon Brown*, Penn. 24, and *Warner* v. *Smith*, 8 Con. 14.

(*l*) *Phillips* v. *Innes* (1837), 4 C. & F. 234. See, however, *Wilson* v. *Simson* (Sc.), 11 July, 1844, where the Court of Session held that a farmer was justified in dismissing without notice a farm labourer, who, when requested by the farmer to remain at home to attend the cattle, which were ill, in order that the other servants might go to church, refused so to do. For a review of the English and American cases, see Benjamin on Sale, 2nd edition, 442. See also the Factory Act of 1878, sec. 21 and 51.

CHAPTER II.

THE EMBEZZLEMENT ACTS.

In consequence of defects in the Common Law with respect to larceny or embezzlement by servants, the Legislature passed, especially before the introduction of the factory system, a number of Acts for the purpose of preventing the embezzlement of materials and tools, and the selling and buying of such embezzled materials, &c. These Acts are now of comparatively small consequence. Their chief provisions are here set out.

1 ANNE, c. 22 (1702).

"*An Act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton and iron manufactures of this kingdom.*"

Section 1.—"If any person or persons employed in the working up the woollen, linen, fustian, cotton or iron manufactures within this kingdom shall imbezzil or purloyn any wefts, thrums, or ends of yarn or any other materials of wool, hemp, flax, cotton, or iron, with which he, she or they, is or shall be entrusted to work upon, or shall reel short or false yarn," he "shall forfeit double the value of the damage done for the use of the poor of the said parish, &c."

Section 2.—"Every person or persons buying or receiving any wefts, thrums or ends of yarn, or any other materials of wool, hemp, flax, cotton or iron, and being thereof lawfully convicted in manner as aforesaid, shall suffer the like penalties and forfeitures as one convicted pursuant to this Act for purloining and embezzling of the said materials."

Section 4.—"All wages, demands, frauds and defaults of labourers in the woollen, linen, fustian, cotton and iron manufactures, for or concerning any work done in the same manufactures, shall and may be heard and determined by any two justices of the peace of the county, riding, division, city or town corporate where the matter in controversie ariseth, &c."

This statute—Chapter 18 in most editions of the Statutes—was made perpetual by 9 Anne, c. 30. It was repealed in part by 58 Geo. III. c. 51; 1 & 2 Will. IV. c. 36, ss. 1 & 2; extended to leather by 13 Geo. II. c. 8; repealed as regards England in case of woollen, linen, cotton, flax, mohair, and silk manufactures, by 6 & 7 Vict. c. 40, s. 1; and last section repealed by Statute Law Revision Act, 1867. As to sec. 4, see Employers and Workmen Act of 1875.

9 GEO. I. c. 27 (1722—23).

"*An Act for preventing journeymen shoemakers selling, exchanging, or pawning boots, shoes, slippers, cut leather, or other materials for making boots, shoes or slippers, and for better regulating the said journeymen.*"

By section 3, justices may issue warrants, &c., to search for leather, &c., purloined, and may cause goods to be restored to owners.

Section 4 is repealed by 38 & 39 Vict. c. 86, s. 17.

12 GEO. I. c. 34 (1725).

"*An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for the better payment of their wages.*"

Part of the Act is repealed by 6 Geo. IV. c. 129, s. 2.

Conspiracy and Protection of Property Act, 1875, sec. 17, sub-sec. 13, repeals so much of section 2 as relates to departing from service, and quitting or returning work before it is finished. Section 2 also enacts, that "if any wool-comber, weaver, servant, or person hired, retained, or employed in the art or mystery of a wool-comber or weaver, shall wilfully damnify, spoil or destroy (without the consent of the owner), any of the goods, wares, or work committed to his care or charge, or wherewith he shall be intrusted," he shall pay double the value.

Section 3 is repealed, so far as it regulates or relates to the payment of wages in goods, or by way of truck, by 1 & 2 Will. IV. c. 36, ss. 1 & 2.

See also 22 Geo. II. c. 27; 22 Geo. III. c. 40, s. 4; 58 Geo. III. c. 51, s. 2; 9 Geo. IV. c. 31, s. 1; 6 & 7 Vict. c. 40, s. 1; Statute Law Revision Act, 1867.

13 GEO. II. c. 8 (1739).

An Act to explain and amend an Act made in the first year of the reign of her late Majesty Queen Anne, intituled an Act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton and iron manufactures of this kingdom; and for extending the said Act to the manufactures of leather."

Section 1 extends 1 Anne, c. 22, s. 1, to "any person or persons who shall be hired or employed in the working up of any woollen, linen, fustian, cotton or iron manufactures," and who shall "purloin, imbezzil, secrete, sell, pawn, exchange, or otherwise illegally dispose of any of the materials with which he, she, or they shall be respectively entrusted to work up such woollen, linen, fustian, cotton or iron manufactures, whether the same or any part thereof be or be not first wrought, made up or manufactured, or shall reel short or false yarn," such person or persons are to forfeit double value or be sent to the House of Correction, and for a second offence to forfeit four times the value.

Section 6. "To prevent oppression of the labourers and workmen employed in any respect in or about making or manufacturing of gloves, breeches, boots, shoes, slippers, wares or goods of that sort before mentioned," . . . "all goods and materials delivered out to be wrought up in the manufacture last-mentioned shall be delivered with a declaration at the same time of the true weight, quantity or tale thereof, on pain that every offender shall forfeit and pay to such labourer, manufacturer or worker, double the value of what shall be due for such work by him, her or them done and performed, &c."

Repealed as to payment of forfeitures, 58 Geo. III. c. 51, s. 2; so far as relates to payments of wages in goods by 1 & 2 Will. IV. c. 36, ss. 1 & 2; except as to Scotland and Ireland, in regard to woollen, linen, cotton, flax, mohair and silk manufactures by 6 & 7 Vict. c. 40, s. 1; as to ss. 7 & 8 by 38 & 39 Vict. c. 86, s. 17.

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15 GEO. II. c. 27 (1741—42).

"*An Act for the more effectual preventing any cloth or woollen goods remaining upon the rack or tenters, or any woollen yarn or wool left out to dry, from being stolen or taken away in the night time.*"

Section 1 empowers one or more Justices to issue search-warrant for cloth stolen off tenters.

22 GEO. II. c. 27 (1749).

An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linnen, fustian, cotton, iron, leather, furr, hemp, flax, mohair and silk manufactures; and for preventing unlawful combinations of journeymen dyers, and journeymen hotpressers, and of all persons employed in the said several manufactures, and for the better payment of their wages (*a*).

Section 1 recites clauses in 13 Geo. II. c. 8; and proceeds to extend and amend the same by enacting that "if any person or persons whatsoever, who shall be hired or employed to make any felt or hat, or to prepare or work up any woollen, linnen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wooll, furr, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, shall from and after the twenty-fourth day of June, one thousand seven hundred and forty-nine, purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he, she, or they shall be respectively intrusted, whether the same or any part thereof be or be not first wrought, made up, manufactured, or converted into merchantable wares, or shall reel false or short yarn (*b*), and shall be thereof lawfully convicted, by the oath or (if the owner thereof be of the people called Quakers) solemn affirmation of the owner of such goods or materials, or by the oath or affirmation of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any one or more (*c*) justice or justices of the peace of the county, riding, division, city, liberty, town or place where such offence shall be committed, or where the person or persons so charged shall reside or inhabit (which oath or affirmation the said justice or justices is and are hereby empowered and required to administer), it shall and may be lawful to and for the said justice or justices, by warrant under his or their hand and seal or hands and seals, to commit the person or persons so convicted to the House of Correction, or other public prison of such county, riding, division, city, liberty, town or place, there to be kept to hard labour for the space of fourteen days, and also to order the

(*a*) By 6 & 7 Vict. c. 40, so much of the above Act as relates to the woollen, linen, cotton, flax, mohair, and silk manufactures, is repealed. Repealed as to penalties by 17 Geo. III. c. 56, s. 16, and 58 Geo. III. c. 51, s. 2.

(*b*) Repealed as to reeling short yarn by 14 Geo. III. c. 44.

(*c*) 17 Geo. III. c. 56, s. 2, substitutes "two or more."

person or persons so convicted to be once publicly whipped (*d*) at the market place, or some other public place of the city, town or place where such offender or offenders shall be respectively committed; and in case of a further conviction, in manner before prescribed by this Act, for or upon a second or other subsequent offence of the same kind, it shall and may be lawful to and for the justice or justices, before whom such conviction shall be had, to commit the person or persons so again offending to the House of Correction, or other public prison as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month; and also to order the person or persons so again offending to be publicly whipped (*d*) at the market place, or some other public place of the city, town or place where such offender or offenders shall be respectively committed, twice or oftener, as to such justice or justices shall appear reasonable; anything in the said Act of the first year of her said late Majesty's reign, or in the said in part recited Act of the thirteenth year of his present Majesty's reign, to the contrary in anywise notwithstanding."

Section 2. "That if any person or persons shall buy, receive, accept, or take, by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person or persons hired or employed to make any felt or hat, or to prepare or work up the woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wooll, furr, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, any thrums or ends of yarn, or any other materials of wooll, furr, hemp, flax, cotton or iron, or any leather, mohair, or silk, whether the same or any part thereof be or be not first wrought, made up, or manufactured, knowing the person or persons of whom he, she, or they so buy, receive, accept or take the said materials, to be so hired or employed as aforesaid, and not having first obtained the consent of the person or persons so hiring or employing him, her, or them, who shall offer to sell, pawn, pledge, exchange, or otherwise dispose of the said materials, or shall buy, receive, accept, or take, in any manner whatsoever, of or from any other person or persons whomsoever, any of the said materials, whether the same be or be not first wrought, made up, or manufactured, knowing the same to be so purloined or imbezzilled," &c.

Such person being convicted shall forfeit a sum of twenty pounds (*e*) for the first offence, and on non-payment be committed to the House of Correction or other public prison for fourteen days, and shall for every second or subsequent offence forfeit the sum of forty pounds.

Section 7. "That if any person or persons entrusted with any of the

(*d*) Repealed as to punishment and penalties, 17 Geo. III. c. 56, s. 1 and s. 16. See also 1 Geo. IV. c. 57.

(*e*) By sec. 3 of 17 Geo. III. c. 56, "the penalty for the first offence shall be any sum not more than forty pounds, nor less than twenty pounds." But see 38 & 39 Vict. c. 86, s. 8.

materials hereinbefore mentioned, in order to prepare, work up or manufacture the same, shall not use all such materials in the preparing, working up, or manufacturing of the same, and shall neglect or delay, for the space of twenty-one days (*f*) after such materials shall be prepared, worked up, or manufactured, to return (if required by the owner or owners of such materials so to do) so much of the said materials as shall not be used as aforesaid to the person or persons entrusting him, her, or them therewith, such neglect or delay shall be deemed and adjudged to be an imbezzling or purloining of such materials; and the person or persons so neglecting or delaying, being thereof convicted, in manner before prescribed for the conviction of offenders against this Act, shall suffer the like punishment as persons convicted of imbezzling or purloining any of the materials hereinbefore mentioned, are by this Act rendered subject and liable to."

Section 12 recites 12 Geo. I. c. 34, and enacts that, "all the provisions, regulations, pains, penalties, and forfeitures therein contained, shall, from and after the said twenty-fourth day of June one thousand seven hundred and forty-nine, extend, and be construed, deemed, and adjudged to extend, to journeymen dyers, journeymen hot pressers, and all other persons whatsoever employed in or about any of the woollen manufactures of this kingdom, and also to journeymen, servants, workmen, and labourers, and all other persons whatsoever employed in the making of felts or hats, or in or about any of the manufactures of silk, mohair, furr, hemp, flax, linnen, cotton, fustian, iron or leather, or in or about any of the manufactures made up of wooll, furr, hemp, flax, cotton, mohair or silk, or of any of the said materials mixed one with another, in as full and ample manner as the said provisions, regulations, pains, penalties, and forfeitures are by the said last mentioned Act declared to extend to the several and respective persons therein named" (*g*).

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27 GEO. II. c. 7 (1753—4).

An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of clocks and watches.

Section 1. "That if any person or persons whatsoever, who shall be hired or employed by any person or persons practising the trade or trades of clock-making or watch-making, or any part or branch, or parts

(*f*) 17 Geo. III. c. 56, s. 7 substituted eight days; see also 9 Geo. IV. c. 31, s. 1.

(*g*) But see 6 Geo. IV. c. 129, s. 2, and 9 Geo. IV. c. 31, s. 1.

or branches of such trade or trades, to make, finish, alter, repair, or clean any clock or clocks, watch or watches, or any part or parts of a clock or clocks, watch or watches, or be intrusted by any person or persons practising the said trade or trades, with any gold, silver, or other metal or material, to be or that shall be in the whole or in part wrought or manufactured for any part or parts of a clock or clocks, watch or watches, or any diamond or other precious stone, to be or that shall be set or fixed in or about any clock or clocks, watch or watches, shall, after the first day of May, one thousand seven hundred and fifty-four, purloin, embezzle, secrete, sell, pawn, or exchange, or otherwise unlawfully dispose of any clock or watch, or any part or parts of any clock or watch, or any gold, silver, or other metal or material, or any part thereof, or any diamond or other precious stone, with which such person or persons shall be intrusted by any person or persons practising the said trade or trades, or any part or branch, or parts or branches of such trade or trades, and shall be thereof convicted by the oath of the owner of such goods, or by the oath of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any one or more justice or justices of the peace of the county, riding, division, city, liberty, town, or place where such offence shall be committed, or where the person or persons so charged shall reside or inhabit (which oath the said justice or justices is and are hereby empowered and required to administer); every such offender shall, for the first offence, forfeit twenty pounds, &c."

Section 2: "That if any person or persons shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person or persons whomsoever, any clock or watch, or any part or parts of a clock or watch, or any gold, silver, or other metal or material, as aforesaid, whether the same or any part thereof, be or be not wrought or manufactured, or any diamond or other precious stone, which shall have been intrusted with any person or persons hired or employed as aforesaid by any person or persons practising the said trade or trades, he, she, or they so buying, receiving, accepting, or taking any such goods, materials, or effects, knowing the same to be so purloined or imbezzled, being thereof lawfully convicted in manner before prescribed for the conviction of persons purloining or embezzling the said goods, materials, or effects, shall, for the first offence, forfeit twenty pounds, &c."

14 GEO. III. c. 25 (1774).

An Act for the more effectual preventing frauds and embezzlement by persons employed in the woollen manufactory.

Section 1. "That if any picker, scribbler, spinner, or weaver or other person or persons whatsoever who shall be in anyways employed in or about the making or manufacturing of woollen cloth, or in preparing materials for that purpose, shall not return all working tools or implements, wool, yarn, chain, woof or abb delivered out to be worked up and manufactured and all such materials as aforesaid wherewith he, she, or they shall be entrusted, or give a satisfactory account touching the same respectively to his, her, or their employer, when thereunto required by the person or persons by whom he, she, or they shall have been so intrusted, or by his, her, or their known clerk or servant, or shall fraudulently steam, damp, or water the wool or yarn delivered to him, her, or them to be worked up, or if any person or persons shall take off, cut, or pick out the list, forrel, or other mark of any piece of cloth, and shall be convicted of any such offence before some justice or justices of the peace for the county, division, liberty, or place where the person or persons so offending shall reside, either by the confession of the party or parties or by the oath or oaths of one or more credible witness or witnesses, every such person so convicted shall be committed to the House of Correction for the space of one calendar month."

Section 2. "That if any person or persons so employed, and who shall have been entrusted with any tools, implements, wool, yarn, chain, woof or abb, or other materials as aforesaid, shall not have delivered or accounted for the same, shall abscond or cannot be found, or shall sell or otherwise dispose of the same or any part thereof; or if any person or persons shall fraudulently buy or receive such tools, implements or materials of any person so employed or entrusted; or if any person or persons shall be suspected of and charged on such suspicion with having embezzled and kept back, by means of fraudulently damping, steaming or watering the wool and yarn delivered out to him, her, or them; or with having sold, bought or otherwise received the same or any part thereof, as aforesaid, and oath shall be made thereof respectively before one of his Majesty's justices of the peace for the county, division, liberty or place where any such offence was committed; such justice shall thereupon issue his warrant to any constable or constables or other peace officer or peace officers to enter into and search, in the daytime, the place of dwelling or residence of such person or persons so offending, and also such other house or place, houses or places, of which the clothier, clerk, or servant as aforesaid shall make oath that he, she, or they have just cause to suspect, it appearing to the said justice to be

reasonable suspicion, that the said working tools, or the said materials, or some part or parts thereof, to have been embezzled or kept back, sold, bought or received as aforesaid, may be secreted and lodged : and if upon search any of the said working tools, wool, yarn, chain, woof or abb, or any cloth with the list forrel, or other marks taken off, cut or picked out, shall be found, the said constable or constables, peace officer or peace officers shall seize the same, and apprehend the person or persons in whose custody or possession the same shall be found and bring him, her, or them before the same or some other of his Majesty's justices of the peace for the county, division, liberty or place aforesaid ; and unless such person or persons in whose custody the same shall be found can give a good account how he, she, or they came by the same, to the satisfaction of such justice or justices, then and in such case such person or persons shall be thereof convicted, and suffer such punishment as is herein-before directed to be inflicted on persons not returning the tools or materials as aforesaid ; and all such tools, wool, yarn, chain, woof or abb, or such cloth as aforesaid, so seized, and not accounted for as aforesaid, shall, upon such conviction, be delivered over to the churchwardens or overseers of the poor of the parish where the same were seized, to be by them sold ; and the monies arising by such sale, after defraying the expenses of such sale, shall be applied to the use of the poor of the said parish."

Section 4 enacts that any justice, upon information made, may cause houses to be searched for ends of cloth, &c., and the same if found to be seized, and parties brought before justice.

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17 GEO. III. c. 11 (1776—7).

An Act for more effectually preventing frauds and abuses committed by persons employed in the manufactures of combing wool, worsted yarn and goods made from worsted, in the counties of York, Lancaster, and Chester.

Section 1 recites Acts 22 Geo. II. c. 27 ; 14 Geo. III. c. 44 ; and 15 Geo. III. c. 14, and, stating that "the good purposes of the said laws have been greatly frustrated," provides for a general meeting of manufacturers of Yorkshire, Lancashire, and Cheshire ; those of Yorkshire to elect eighteen, and those of Lancashire and Cheshire nine persons, to be a committee. Committee to appoint inspectors. See 24 & 25 Vict. c. 101.

17 GEO. III. c. 56 (1777).

An Act for amending and rendering more effectual the several laws now in being, for the more effectual preventing of frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and also for making provisions to prevent frauds by journeymen dyers (*i*).

Section 3 recites section 2 of Act of 23 Geo. II., and substitutes a penalty of not more than forty pounds, nor less than twenty pounds.

Section 5. "If any person shall sell, pawn, pledge, exchange or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, any such materials as aforesaid, whether wrought or unwrought, mixed or unmixed, knowing them to have been purloined or embezzled, every such person lawfully convicted shall be liable to the same punishment as he or she would be liable to by virtue of this Act, on being convicted of receiving purloined or embezzled materials, knowing them to have been purloined or embezzled."

Section 6. "When any person or persons shall be brought or charged upon oath before any two or more justices of the peace, by virtue of this Act, with being suspected of, or with having purloined or embezzled, or with having received any such materials as aforesaid, whether the same be wrought or unwrought, mixed or unmixed, knowing the same to have been either purloined or embezzled, or received from some person or persons not entitled to dispose thereof, and it shall be made appear upon the oath or (being of the people called Quakers) upon the affirmation of one or more credible witness or witnesses, to the satisfaction of such justices, that such person or persons hath or have purloined or embezzled, or hath or have received any such materials as aforesaid, knowing the same to have been purloined or embezzled, or received from some person or persons not entitled to dispose thereof, it shall and may be lawful for such justices, or for the justices at their general or general quarter sessions of the peace, and they are hereby respectively authorized and empowered (if they shall think fit) to convict such person or persons of having purloined or embezzled, or of having received such materials as aforesaid, knowing the same to have been purloined or embezzled, or received from some person or persons not entitled to dispose thereof, although no proof shall be given to whom such materials belong; and the person or persons so convicted shall for

(*i*) By 6 & 7 Vict. c. 40, s. 1, repealed as to woollen, linen, cotton, flax, mohair and silk manufactures. See also 6 Geo. IV. c. 129; 1 & 2 Will. IV. c. 36; 34 & 35 Vict. c. 116; and 38 & 39 Vict. c. 86, s. 17.

every such offence, be subject to such and the like penalties and punishments, at the discretion of such justices respectively, as persons convicted of buying or receiving any such materials as aforesaid, knowing the same to have been purloined or embezzled, are by this Act subject and liable to" (*k*).

Section 9. "If any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured; or if any person shall receive in his or her own name any of the said materials, in order to be manufactured by himself or herself, and afterwards deliver the same, or any part thereof, to any other person to be manufactured (without the consent of the owner thereof); or if any carrier or other person employed to deliver any such materials to any workman, to be prepared or wrought up, shall designedly deliver the same to any other person than the person to whom such materials were ordered or intended to be delivered by the owner thereof; all and every person and persons offending in any of the cases aforesaid shall for every such offence, be liable to prosecution, in the same manner, and to the same punishment, as is by this Act directed in respect to persons taking in any of the said materials in order to work up, and afterwards wilfully neglecting or refusing the performance of their work for the space of time aforesaid."

Section 10. "It shall and may be lawful for any two justices of the peace of any county, riding, division, city, liberty, town, or place, upon complaint made to them, upon oath by any one credible person, or (being of the people called Quakers) upon solemn affirmation, that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling-house, outhouse, yard, garden, or other place or places (*l*), by virtue of a warrant under their hands and seals, to cause every such dwelling-house, outhouse, yard, garden, or place to be searched in the daytime: and if any such (*m*) materials suspected to be purloined or embezzled shall be found therein, to cause the same, and the person or persons in whose house, outhouse, yard, garden, or other place the same shall be found, to be brought before any two justices of the peace for the same county, riding, division, city, liberty, town, or place; and if the said person or persons shall not give an account

(*k*) See 22 Geo. II. c. 27, s. 7. As to power to reduce penalties, 38 & 39 Vict. c. 86, s. 8, and the Summary Jurisdiction Act of 1879, s. 4.

(*l*) A warehouse occupied only for business purposes and not within the curtilage of a dwelling-house, is within the Act; *Queen* v. *Edwardson* (1859), 2 E. & E. 77; 23 L. J. M. C. 213.

(*m*) "'Such' does not appear to be applied to the circumstances; but to the nature of the article." "The offence aimed at is the possession of goods, suspected to be purloined, without being able to give a satisfactory account of them"; and it does not matter that the materials were not found concealed in dwelling-house, outhouse, &c., or in the execution of a search warrant. *Queen* v. *Wilcox* (1845), 7 Q. B. 317; *Davis* v. *Nest* (1833), 6 C. & P. 167.

to the satisfaction of such justices, how he, she, or they came by the same, then the said person or persons so offending shall be deemed and adjudged guilty of a misdemeanor, and shall be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong."

Section 11. "That every peace officer, constable, headborough, or tythingman, in every county, city, town corporate, or other place, where there shall be officers, and every beadle within his ward, parish, or district, and every watchman, during such time only as he is on his duty, shall and may apprehend or cause to be apprehended, all and every person or persons who may reasonably be suspected of having or carrying, or anyways conveying, at any time after sunsetting, and before sunrising, any of such materials suspected to be purloined or embezzled, and the same, together with such person or persons, as soon as conveniently may be, convey or carry before any two justices of the peace for the county, riding, division, city, liberty, town or place within which the suspected person or persons shall be apprehended; and if the person or persons so apprehended in conveying any such materials shall not produce the party or parties duly entitled to dispose thereof, from whom he, she, or they bought or received the same, or some other credible witness to testify upon oath or (being of the people called Quakers) upon solemn affirmation, to the sale or delivery of the said materials (which oath or affirmation respectively such justices are hereby empowered to administer), or shall not give an account, to the satisfaction of such justices, how he, she, or they came by the same; then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong."

Section 15. "It shall be lawful for the owner or owners of any such materials, from time to time, as occasion shall require, to demand entrance, and enter, at all reasonable hours in the daytime, into the shops or outhouses of any person or persons employed by him or them to work up any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal, by any such person or persons so employed to permit such entrance or inspection, he, she, or they so refusing, shall forfeit and pay such sum of money, not exceeding forty shillings, nor less than ten shillings, as the justices before whom he, she, or they shall be convicted shall think proper, to be recovered and applied in the same manner as is by this Act directed for the misdemeanor of being in the possession of any such materials, without being able to account satisfactorily for such possession."

Section 16 mentions 22 Geo. II., c. 27, and enacts that: "Every penalty or punishment directed by or other provision contained in the said recited Act, in respect to the said materials, so far as the said recited Act is not varied by this Act, and all the provisions in this Act contained in respect

to the said materials, shall extend and be applicable to any tool or tools, and implement or implements, with which any person or persons shall be entrusted for making, working up, or manufacturing, the said materials, and also to any drug or drugs, ingredient or ingredients, with which any person or persons shall be intrusted, for the purpose of dyeing, preparing, or manufacturing such of the aforesaid materials as are usually dyed, prepared, or manufactured, in the same manner as if the said tools and implements, drugs and ingredients, were particularly mentioned both in the said recited Act and in the preceding provisions of this Act."

Section 17. "If any person, hired, retained, or employed as a journeyman dyer, or as a servant or apprentice, in the dyeing of any felt or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair, or silk materials, whether the same shall be wrought or unwrought, or shall be mixed or unmixed with other of the said materials, shall, without the consent of the master, person or persons by whom such journeyman, servant, or apprentice shall be hired, retained, or employed, wilfully dye any of the said materials, whether wrought or unwrought, or mixed or unmixed with other of the said materials, or without such consent shall wilfully receive any such materials as aforesaid, for the purpose of dyeing the same, whether the same shall be dyed or prepared for dyeing, he or she so guilty of either of the said offences shall, for the first offence, forfeit the sum of ten shillings, and for the second offence, the sum of twenty shillings; and for every subsequent offence, the sum of forty shillings; or if any person shall procure any such materials as aforesaid, to be dyed by any person so hired, retained, or employed as a journeyman, servant or apprentice, without the consent of his or her master or employer, or shall offer any such materials to any such journeyman, servant, or apprentice, for the purpose aforesaid, he or she so offending, being thereof lawfully convicted, by the oath or (being of the people called Quakers) affirmation of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place, where the offence shall be committed, shall, for the first offence, forfeit the sum of five shillings; and for the second offence, the sum of twenty shillings; and for every subsequent offence, the sum of four pounds," &c.

28 GEO. III. c. 55 (1788).

An Act for the better and more effectual protection of stocking frames and the machines or engines annexed thereto or used therewith, and for the punishment of persons destroying or injuring of such stocking frames, machines or engines, and the framework knitted pieces, stockings and other articles and goods used and made in the hosiery or framework knitted manufactory, or breaking or destroying any machinery contained in any mill or mills used or any way employed in repairing or spinning of wool or cotton for the use of the stocking frame.

Section 1 states that any framework knitters who refuse to deliver up frames let to them on hire shall forfeit the sum of twenty shillings.

Section 2 states that a person who has hired a stocking frame, &c., and who wrongfully disposes of it, may be imprisoned for not less than three months and not exceeding twelve.

Section 3 punishes in like manner those who wilfully and knowingly purchase frames or machines so disposed of.

Section 4 is repealed by Statute Law Revision Act, 1871.

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6 & 7 VICT. c. 40 (1843).

An Act to amend the laws for the prevention of frauds and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures; and for the further securing the property of the manufacturers and the wages of the workmen engaged therein.

Section 1 recites 8 & 9 Wm. III. c. 36; 1 Anne, St. 2, c. 18; 9 Anne, c. 32; 12 Geo. I. c. 34; 13 Geo. II. c. 8; 22 Geo. II. c. 27; 17 Geo. III. c. 56; 32 Geo. III. c. 44 (repealed), and enacts, "that from and after the commencement of this Act, so much of the said recited Acts or any of them as relates to the woollen, linen, cotton, flax, mohair, and silk manufactures, or any of them, or any manufactures whatsoever made of wool, cotton, flax, mohair, or silk materials, whether the same be or be not mixed with each other or with any other materials, shall, so far as respects the manufactures, trades, occupations, and employments hereinafter mentioned, be, and the same are hereby repealed, save and except so far as the same may have repealed any former Acts or enactments."

Section 2. "That if any person whosoever entrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials for the

purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or any tools or apparatus for manufacturing the said materials, shall sell, pawn, purloin, embezzle, secrete, exchange, or otherwise fraudulently dispose of the same materials, tools, or apparatus, or any part thereof, he shall, upon being thereof lawfully convicted by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, before two or more justices of the peace, forfeit the full value of the same, and also forfeit such penalty not exceeding ten pounds, together with costs, as to the said justices shall seem meet," &c.

Section 3. "That if any person whosoever intrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials, for the purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or with any tools or apparatus for manufacturing the said materials, shall neglect or delay to return the said materials, tools, or apparatus, or any part thereof, for the space of fourteen clear days after being required so to do by the party entrusting him therewith, or by some person on his behalf, by notice in writing to be served upon or left at the last or usual place of abode or business of such person (unless prevented by some reasonable and sufficient cause, to be allowed by the justices before whom he shall be brought), then and in every such case all or so much or so many of the said materials, tools, or apparatus as shall not be returned to the person so entrusting him therewith within the time aforesaid, shall be deemed to be embezzled by the person so neglecting or delaying to return the same; and the person so neglecting or delaying to return the same shall for every such offence be liable to be proceeded against for embezzlement, in the same manner, and subject to the same forfeiture and penalty, with costs, and to be applied in the same manner, as are respectively hereinbefore prescribed and imposed in respect to persons selling, pawning, purloining, embezzling, secreting, exchanging, or otherwise fraudulently disposing of the said materials."

Section 4. "Any person who shall purchase or take in pawn, or who in any other way shall receive into his premises or possession, any woollen, worsted, linen, cotton, flax, mohair, or silk materials, and whether the same or any part of the said materials be or be not wholly or partially wrought, made up, or manufactured into merchantable wares, or any tools or apparatus for manufacturing the same, knowing that such materials, tools, or apparatus are purloined or embezzled or

fraudulently disposed of, or that the person from whom he shall purchase, take in pawn, or receive the same, is fraudulently or unlawfully disposing thereof, or knowing such person to be employed or entrusted by any other person or persons to work up either by himself or by or with others the materials so purchased, taken in pawn, or received for any other person or persons, and not having first obtained the consent of the person or persons so employing or entrusting him therewith, shall, on conviction by the oath of the owner or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned."

Section 5. "That if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise dispose of any such materials, tools, or apparatus as aforesaid, knowing the same to have been so purloined or embezzled or received from persons fraudulently disposing thereof as aforesaid, he shall, on conviction by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned."

Section 8. "That upon proof on oath before a justice of the peace that there is reasonable cause to suspect that any person has in his possession or on his premises any such materials, tools, or apparatus as aforesaid which have been purloined, embezzled, or otherwise fraudulently disposed of, it shall be lawful for the said justice and such justice is hereby required to grant his warrant to search the dwelling-house and premises of such person, and if any such property shall be found therein, to cause such materials, tools, or apparatus, and the person in whose possession or on whose premises the same shall be found, to be brought before him or some other justice of the peace, to be dealt with in the same manner as any person brought before a justice under the enactment next hereinafter contained."

Section 9. "Peace officers to apprehend suspected persons. Persons apprehended, and not proving that the property is honestly come by, to be punishable," &c.

Section 12. "That where no proof shall be given at the time of conviction of the ownership of property found in the possession of a person convicted under this Act, the justices or Court shall cause the property so found to be deposited in some safe place for any time not exceeding thirty days, and shall, if the property be of sufficient value to pay the expenses thereof, order an advertisement inserted in one or more of the public newspapers of the town or city where, or nearest the place where, the same was found, and by fixing a notice on some public place describing such property, and where the same may be inspected, or in case of the said property not being of sufficient value to pay the said expenses, then by fixing such notice as aforesaid only; and in case any person shall prove his own or his employer's ownership or property

therein upon oath to the satisfaction of a justice, restitution of such property shall be ordered to the owner thereof, after paying the reasonable cost of removing, depositing, advertising, and giving notice of the same; but if no ownership be proved to such property the justice shall, at the termination of thirty days, order such property to be sold, and after deducting the charges aforesaid with the charges of sale, shall order the residue to be applied in the same manner as is hereafter directed for the disposal of any other penalty under this Act."

Section 13. "That it shall be lawful for the owner of any such materials as aforesaid, or any other person duly authorised by him, or other the person who shall have so entrusted such materials, from time to time, as occasion shall require, to demand leave of entrance and enter at all reasonable hours in the daytime into the shops or outhouses of any person employed to work up or manufacture, either by himself or by any other person under him, any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal or neglect by any such person or persons so employed to permit such entrance or inspection, such person shall, for so refusing to permit such entrance or inspection, forfeit any sum not exceeding twenty shillings, as the justices before whom he shall appear or be brought shall think proper, to be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act: provided always, that nothing herein contained shall authorise any such owner or other person as aforesaid to inspect any frame, tools, or apparatus wherewith such materials are worked up, in case such frame, tools, or apparatus comprise any new invention or improvement not disclosed to the public."

Section 14. "Warrant may be granted by justice on complaint on oath that person is about to abscond," &c.

Section 15. "If any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, every such person so offending, and being convicted thereof on the oath of one or more credible witness or witnesses before two or more justices, shall for every such offence be liable to the same punishment as is hereinbefore directed in respect to persons not fulfilling their engagements."

Section 16. "Justice to issue warrant to constable to take possession of property entrusted to any person committed for embezzlement," &c.

Section 18. "No frame, loom, or machine, materials, tools, or apparatus which shall be entrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, whether such frame, loom, or machine, materials, tools, or apparatus, shall or shall not be rented or taken by the hire, shall at any time or times hereafter be distrained or seized, or be liable to be distrained or seized, for rent or for debt, or under any execution or other proceedings whatever, unless the rent be due or the money be owing by the owner of

the said frame, loom, or machine, or of the said materials or tools or apparatus aforesaid, or of any part thereof respectively."

Section 19. "In case of refusal to restore frames, &c., unlawfully seized, justice may order their restoration," &c.

Section 20. "That if any person or persons shall obliterate, efface, or alter the owner's name or initials, or other distinguishing mark, on any loom, machine, or any bar or part thereof, or the moulds thereof, without the order or authority of the owner thereof, he shall, on conviction thereof before two justices of the peace, forfeit any such sum not exceeding two pounds as such two justices shall order and direct, to be applied in the first place, in paying the costs of the proceedings before such justices, and the surplus, if any, to the party injured; and in default of payment of such forfeiture immediately on conviction, or within such period as the justices so convicting shall direct, then the said justices may, either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, there to be imprisoned, with or without hard labour, as to the said justices shall seem meet, for any term not exceeding two calendar months, unless the amount of such forfeiture be sooner paid."

Section 21. "And for the discouragement of frivolous and vexatious informations and prosecutions under this Act, be it enacted, that it shall be lawful for any justices or Court of petty sessions before whom any case under this Act is tried to award costs to the defendant, with an allowance for his loss of time, in case of acquittal, to be paid by the prosecutor; and also, if it shall appear to such justices or court that the charge was made from a malicious, vexatious, or frivolous motive, or in case the party shall be charged with embezzlement of materials, by reason of any deficiency in the weight of the materials which he shall have returned to the person by whom they were entrusted to such party, as compared with the weight of the materials received, and it shall be proved upon the hearing of the case that such materials were knowingly and fraudulently delivered to the party charged whilst in a damp state, so that the apparent weight thereof was thereby increased, it shall be lawful for such justices or court to award to the defendant such further sum of money not exceeding twenty pounds as to such justices or court shall seem fit, to be paid by such prosecutor as a compensation for the injury done; and in default of payment such costs and allowances and compensations may be levied by distress and sale of the prosecutor's goods."

Section 22. "That where any person shall be charged on oath with any offence punishable under this Act, one justice may receive the original information and summon the person charged to appear before any two justices of the peace at a time and place to be named in such summons, and if he shall not appear accordingly, then the justices there present may either proceed to hear and determine the case *ex parte*, or any of such justices may issue a warrant for apprehending such person, and bringing him to answer the said charge before any two or more justices,

or the justice before whom the charge shall be made may, if he shall so think fit, issue such warrant in the first instance without any previous summons, and commit the person so charged to prison, in order that he may be brought forward for trial (unless he enter into such bail as may be required by such justice for his appearance at such time and place as shall be appointed); and the justices before whom the person charged shall appear or be brought shall proceed to hear and determine the case; and after adjudication all and every the subsequent proceedings to enforce obedience thereto, whether respecting the penalty, forfeiture, distress, imprisonment, costs, or other matter or thing relating thereto, may be enforced by any one of the said justices" (*n*).

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24 & 25 VICT. c. 96 (1861).

An Act to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences.

As to Larceny from Mines.

Section 38. "Whosoever shall steal, or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement" (*o*).

Section 39. "Whosoever being employed in or about any mine, shall take, remove, or conceal any ore of any metal, or any lapis calaminaris, manganese, mundick or other mineral found or being in such mine, with intent to defraud any proprietor of or any adventurer in such mine, or any workman or miner employed therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

As to Larceny in Manufactories.

Section 62. "Whosoever shall steal to the value of ten shillings, any woollen, linen, hempen, or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress of

(*n*) See Statute Law Revision Act, 1874 (No. 2), and 38 & 39 Vict. c. 86, s. 17.

(*o*) *Rex* v. *Webb* (1835), 1 Moore C. C. 431. See 39 & 40 Geo. III. c. 77, s. 4.

manufacture (*p*) in any building, field, or other place, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

As to Larceny or Embezzlement by Clerks, Servants, or Persons, in the Public Service.

Section 67. "Whosoever, being a clerk or servant (*q*), or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

Section 68. "Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money or valuable security, which shall be delivered to or received or taken in possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

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24 & 25 VICT. c. 97 (1861).

An Act to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property.

Section 14. "Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any

(*p*) *R.* v. *Woodhead* (1836), 1 M. & R. 549.

(*q*) See Part I., Chapter III.

goods or article of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or any framework knitted piece, stocking, hose or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any time not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

Section 15. "Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy (*r*) or to render useless, any machine or engine, whether fixed or moveable, used or intended to be used for sowing, reaping, mowing, threshing, ploughing or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, cotton, hair, mohair or alpaca goods, or goods of any one or more of those materials mixed with each other or mixed with any other material, or any framework knitted piece, stocking, hose or lace), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

(*r*) *R.* v. *Fisher* (1865), L. R. 1 C. C. 7.

26 & 27 VICT. c. 103 (1863).

An Act to amend the law in certain cases of misappropriation by servants of the property of their masters.

"Whereas the offence of taking corn or other food by a servant from the possession of his master, contrary to his orders, for the purpose of giving the same or of having the same given to the horses or other animals of such master, is by law a felony (*s*): And whereas it is desirable to alter the law in this respect:" Be it enacted as follows:—

1. If any servant shall, contrary to the orders of his master, take from his possession any corn, pulse, roots, or other food, for the purpose of giving the same or of having the same given to any horse or other animal belonging to or in possession of his master, the servant so offending shall not by reason thereof be deemed guilty of or be proceeded against for felony, but shall, on conviction of such offence before two justices of the peace, at their discretion, either be imprisoned with or without hard labour, for any term not exceeding three months, or else shall forfeit and pay such penalty as shall appear to them to be meet, not exceeding the sum of five pounds, and if such penalty shall not be paid, either immediately after the conviction, or within such period as the said justices shall at the time of the conviction appoint, the servant so offending shall be imprisoned, with or without hard labour, for any term not exceeding three months, unless such penalty be sooner paid; provided always, that if upon the hearing of the charge the said justices shall be of opinion that the same is too trifling, or that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the charge, without proceeding to a conviction: provided also, that if upon the trial of any servant for feloniously taking from his master any corn, pulse, roots, or other food consumable by horses or other animals, such servant shall allege that he took the same under such circumstances as would constitute an offence punishable under this Act, and thereof shall satisfy the jury charged with his trial, then it shall be lawful for such jury to return a verdict accordingly; and thereupon the Court before which such trial shall take place shall proceed to award such punishment against such servant as may be awarded by two justices of the peace on the conviction of any person under the provisions of this Act: provided also, that in case of non-payment of any penalty to be imposed by the Court on such servant, he shall be imprisoned, with or without hard labour, for any term not exceeding three months, as the Court shall order, unless such penalty shall be sooner paid.

(*s*) This Act was passed in consequence of the decision in *R.* v. *Privett* (1846), 1 Den. C. C. 193.

Section 2 enacts power to appeal against conviction.

Section 3 enacts that no certiorari shall lie.

Section 4 enacts that summary proceedings may be taken under 11 & 12 Vict. c. 43, except in London and the Metropolitan police district.

Section 5 enacts that the Act shall extend to England only.

Section 6. This Act shall commence and take effect from the 1st day of September, 1863.

CHAPTER III.

SERVANTS' CHARACTERS.

32 GEORGE III. c. 56 (1792).

An Act for preventing the counterfeiting of certificates of the characters of servants(a).

WHEREAS many false and counterfeit characters of servants have either been given personally, or in writing, by evil disposed persons being, or pretending to be, the master, mistress, retainer or superintendent of such servants, or by persons who have actually retained such servants in their respective service, contrary to truth and justice, and to the peace and security of his Majesty's subjects: And whereas the evil herein complained of is not only difficult to be guarded against, but is also of great magnitude, and continually increasing, and no sufficient remedy has hitherto been applied. Be it therefore enacted by the King's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of July, one thousand seven hundred and ninety-two, if any person or persons shall falsely personate any master or mistress, or the executor, administrator, wife, relation, housekeeper, steward, agent, or servant of any such master or mistress, and shall, either personally or in writing, give any false, forged or counterfeited character to any person offering him or herself to be hired as a servant into the service of any person or persons, then, and in such case, every such person or persons so offending shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

2. And be it further enacted by the authority aforesaid, that from and after the said first day of July, one thousand seven hundred and ninety-two, if any person or persons shall knowingly and wilfully pretend, or falsely assert in writing, that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever, other than that for which or in which he, she, or they shall have hired or retained such servant in his, her, or their service or employment, or

(a) See as to servants' characters, Part I., Chapter XVIII.

for the service of any other person or persons, that then, and in either of the said cases, such person or persons so offending as aforesaid shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

3. And be it further enacted by the authority aforesaid, that from and after the said first day of July one thousand seven hundred and ninety-two, if any person or persons shall knowingly and wilfully pretend or falsely assert in writing, that any servant was discharged or left his, her, or their service at any other time than that at which he or she was discharged or actually left such service, or that any such servant had not been hired or employed in any previous service, contrary to truth, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

4. And be it further enacted by the authority aforesaid, that from an d after the said first day of July one thousand seven hundred and ninety-two, if any person shall offer himself or herself as a servant, asserting or pretending that he or she hath served in any service in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of his or her character, or shall in anywise add to or alter, efface, or erase any word, date, matter, or thing contained in or referred to in any certificate given to him or her by his or her last or former actual master or mistress, or by any other person or persons duly authorised by such master or mistress to give the same, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

5. And be it further enacted by the authority aforesaid, that from and after the said first day of July one thousand seven hundred and ninety-two, if any person or persons, having before been in service, shall, when offering to hire himself, herself, or themselves as a servant or servants in any service whatsoever, falsely and wilfully pretend not to have been hired or retained in any previous service as a servant, that then and in such case such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

6. And be it further enacted by the authority aforesaid, that from and after the said first day of July one thousand seven hundred and ninety-two, if any person or persons shall be convicted of any or either of the offence or offences aforesaid, by his, her, or their confession, or by the oath of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place, where the offence or offences shall have been committed (which oath such justices are hereby empowered and required to administer), every such offender or offenders shall forfeit the sum of twenty pounds, one moiety whereof shall be paid to the person or persons on whose information the party or parties offending shall have been convicted,

and the other moiety thereof shall go and be applied for the use of the poor of the parish wherein the offence shall have been committed ; and if the party who shall have been so convicted shall not immediately pay the said sum of twenty pounds so forfeited, together with the sum of ten shillings for the costs and charges attending such conviction, or shall not give notice of appeal, and enter into recognizance in the manner hereinafter mentioned and in that behalf provided, such justices shall and may commit every such offender to the house of correction or some other prison of the county, riding, division, city, liberty, town, or place, in which he or she shall have been convicted, there to remain and be kept to hard labour, without bail or mainprize, for any time not exceeding three months, nor less than one month, or until he or she pay the said sum so forfeited, together with such costs and charges as aforesaid.

7. [*Repealed by Statute Law Revision Act*, 1871.]

8. Provided always, and be it further enacted by the authority aforesaid, that if any servant or servants, who shall have been guilty of any of the offences aforesaid, shall, before any information has been given or lodged against him, her, or them, for such offence, discover and inform against any person or persons concerned with him, her, or them in any offence against this Act, so as such offender or offenders be convicted of such offence in manner aforesaid, every such servant or servants so discovering and informing, shall thereupon be discharged and indemnified of, from, and against all penalties and punishments to which, at the time of such information given, he, she, or they might be liable by this Act, for or by reason of such his, her, or their own offence or offences.

9. [*Form of conviction, see* 11 & 12 *Vict. c.* 43, *s.* 17, *and schedule.*]

10. Provided always, and be it further enacted, that if any person shall think himself or herself aggrieved by anything done in pursuance of this Act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county or place wherein the cause of complaint shall have arisen, such appellant entering into recognizance with two sufficient sureties, in the sum of twenty pounds each, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by, such justices at such general or quarter sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance ; which said justices shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper, and the determination of such general or quarter sessions shall be final, binding, and conclusive to all intents and purposes ; and no conviction or order made concerning any matters aforesaid, or any other proceedings to be had, touching the conviction or convictions of any offender or offenders against this Act, shall be quashed for want of form, or be removed by certiorari or any other writ or process whatsoever into any of his Majesty's courts of record at Westminster.

CHAPTER IV.

THE TRUCK ACT.

Enactments intended to stop frauds and abuses arising out of the practice of paying workmen and labourers in goods of a poor quality, or of making unreasonable and excessive deductions from wages, are very ancient. As long ago as 1464 Parliament interfered (4 Ed. IV. c. 1, repealed by 1 & 2 Will. III. c. 36) with a view to protect labourers against being compelled to take a great part of their wages in "pins, girdles, and other unprofitable wares." Parliament declared that masters "shall pay to the carders, spinners, and all such others labourers, in any part of the said trade, lawful money for all their lawful wages, and payments of the same."

In 1565 the 8 Eliz. c. 7, s. 6 was passed for the benefit of the "sheermen, frizers, and cottoners" of Shrewsbury, to prohibit payment in wares. The 1 Anne, c. 18 (made perpetual by 9 Anne, c. 30; see also 10 Anne, c. 16, s. 6) was also passed in order to prevent "the oppression of the labourers and workmen employed in the woollen, linen, fustian, cotton, and iron manufacture." It declared that payments should be by lawful coin, and not by cloth, victuals, or commodities. As the manufactures of England extended, the evils of the truck system spread; and the Legislature interfered from time to time, now in one trade and now in another, with a view to ensure payment of wages in cash.

Acts dealing with this subject were passed in 1714 (1 Geo. I. s. 2, c. 15), in 1725 (12 Geo. I. c. 34, ss. 3, 4, & 8), in 1740 (13 Geo. II. c. 8, s. 6), in 1756 (29 Geo. II. c. 33), in

1779 (19 Geo. III. c. 49), in 1817 (57 Geo. III. c. 115, and c. 122), and 1818 (58 Geo. III. c. 51).

The former Acts on the subject were repealed by 1 & 2 Will. IV., c. 36. In 1831 the present Truck Act was passed. It consolidated the whole law. It applies only to the trades mentioned in Section 19. Domestic servants and servants in husbandry are excluded from the Act (sec. 20).

1 & 2 WM. IV. c. 37.

[15th October, 1831.]

An Act to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm.

Whereas it is necessary to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all contracts hereafter to be made for the hiring of any artificer (*a*) in any of the trades hereinafter enumerated, or for the per-

(*a*) For definitions see ss. 19 & 25. For many years after the passing of the Truck Act doubts prevailed as to the class of "artificers" to whom it applied. The Courts decided that it did not apply to persons who did not contract to work personally, and who were not paid by wages in the ordinary way. In *Sleeman* v. *Barrett* (1864), 2 H. & C. 934; 33 L. J. N. S. Ex. 153, Pollock, C.B., thus defined the class of persons within the Act: "Where persons are employed to do certain work, and are to receive wages for their labour, the contract being merely for the labour, in my judgment that is within the Truck Act. But if the contract is not for the labour, but for the result or effect of the labour, as, for instance, a contract for the removal of a quantity of clay, that is not within the Act, because there the contract is not for the labour, but for that which the labour is to accomplish." See also Parke, B., in *Riley* v. *Warden* (1848), 2 Ex. 59; 18 L. J. N. S. Ex. 120; and Bramwell, B., in *Archer* v. *James* (1862), 2 B. & S. 95; 31 L. J. Q. B. 153. The following are the chief cases relative to "artificers":—

Not Within the Act.

Riley v. *Warden* (1848), 2 Ex. 59; 18 L. J. N. S. Ex. 20. (Plaintiff had engaged to make a cutting on a projected railway at so much a cubic yard. He hired eight or nine men to work with him. Not an "artificer," because he had not contracted to work personally for wages. The Act must be taken "as applicable to those persons only who strictly contract as labourers, that is, to such as enter into a contract to employ their personal services, and to receive payment for that service in wages:" Parke, B. *Sharman* v. *Sanders* (1853), 22 L. J. N. S. C. P. 86; 13 C. B. 166; 3 C. & K. 298. (Plaintiff employed to load and unload, and burn iron-stone for defendants at a certain price per ton, payable at the end of each month, the defen-

formance by any artificer of any labour in any of the said trades, the wages of such artificer shall be made payable in the current coin of this realm only, and not otherwise ; and that if in any such contract the whole or any part of such wages shall be made payable in any manner other than in the current coin aforesaid, such contract shall be and is hereby declared illegal, null, and void.

2. And be it further enacted, that if in any contract hereafter to be made between any artificer in any of the trades hereinafter enumerated and his employer, any provision shall be made directly or indirectly

dants finding the carts and horses. The plaintiff employed men to do the work, but from time to time personally assisted in it ; not within the Act.) *Ingram* v. *Barnes* (1857), 7 E. & B. 115 ; 26 L. J. Q. B. 82 & 319. (Plaintiff engaged to make as many bricks as defendant required in defendant's brick-field at so much a thousand, the plaintiff finding all the labour, defendant all the materials. Plaintiff, assisted by others, made bricks, and worked personally ; held by Campbell, C.J., and Coleridge, J., not within the Act, on the ground that there was no contract to do the work personally, Erle, J., dissenting.. Affirmed by Exchequer Chamber, which expressed approval of *Riley* v. *Warden*, and *Sharman* v. *Sanders*.) *Sleeman* v. *Barrett* (1864), 2 H. & C. 934 ; 33 L. J. Ex. 153. (Butty colliers working in partnership under a verbal contract ; paid generally by the day, but sometimes by the ton or yard ; they worked like ordinary workmen, and were not allowed to leave the work or underlet, but were allowed to employ men to work under them ; not within the Act.) *Pillar* v. *Llynvi Coal Co.* (1869), L. R. 4 C. P. 752 ; 38 L. J. C. P. 294. (Plaintiff, a timman, employed by defendants to work, either at piece work or by day at fixed prices, out of materials supplied by the defendants at varying prices ; plaintiff within the Act as being required to give personal service, and not a tradesman.) *Philips* v. *McInnes* (1874), 2 R. 224. (A foreman at a slate quarry, who was bound to assist workmen when operations were "falling back," or "in need of being pushed forward," not an artificer.)

WITHIN THE ACT.

Weaver v. *Floyd* (1852), 21 L. J. N. S. Q. B. 151. (A collier, entitled to employ men to assist him, engaged to get coal or iron-stone from a mine, and to be paid at a certain rate per ton. It appeared that the collier was bound to give personal service ; within the Act.) *Bowers* v. *Lovekin* (1856), 6 E & B. 584 ; 25 L. J. N. S. Q. B. 371. (Butty colliers, who employed other men, and who were paid so much a ton on a yard of coal, but who had to work personally, and were treated as workmen, within the Act. Erle, J., gave a wide meaning to the Act : "I should not assert that, where a miner has contracted to do artificer's work at wages to be regulated by the piece, he is necessarily out of the protection of the Act, unless it is expressly stipulated that he must work himself." *Millard* v. *Kelly* (1858), 32 L. T. O. S. 123. (Labourer engaged in carrying iron between certain iron works and the boats in a canal.) *Lawrence* v. *Todd* (1863), 14 C. B. N. S. 554 ; 32 L. J. M. C. 238. (T., with six others, agreed to complete an iron vessel, and they were exclusively to serve appellant. They were at liberty to employ other workmen of inferior skill, who, as well as themselves, were to be subject to the regulations of the appellant's yard. They were to be paid at the rate of £5 per ton ; held that T. and his fellow-workmen were artificers or handicraftsmen within 4 Geo. IV. c. 34, s. 3.) *Moorhouse* v. *Lee* (1864), 4 F. & F. 354. (A framework knitter an artificer within the Truck Act.)

respecting the place where, or the manner in which, or the person or persons with whom, the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be and is hereby declared illegal, null, and void.

3. And be it further enacted, that the entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour by him done in any such trade, shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null, and void.

4. And be it further enacted, that every artificer in any of the trades hereinafter enumerated shall be entitled to recover from his employer in any such trade, in the manner by law provided for the recovery of servants' wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer in such trade as shall not have been actually paid to him by such his employer in the current coin of this realm.

5. And be it further enacted, that in any action, suit, or other proceeding to be hereafter brought or commenced by any such artificer as aforesaid, against his employer, for the recovery of any sum of money due to any such artificer as the wages of his labour in any of the trades hereinafter enumerated, the defendant shall not be allowed to make any set-off, nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff as or on account of his wages or in reward for his labour, or by reason or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest (*b*).

6. And be it further enacted, that no employer of any artificer in any of the trades hereinafter enumerated shall have or be entitled to maintain any suit or action in any Court of law or equity against any such artificer, for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to any such artificer by any such employer, whilst

(*b*) *Law* v. *Pratt* (1843), 1 L. T. O. S. 623. (One of the defendants, partner in a manufacturing firm, kept a shop, at which his men were accustomed to get goods on credit. On the pay-day, once a week, the men who dealt at the shop (the plaintiff being one of them) got from the shop tickets showing their debt, and carried them to the pay clerk, who asked them, "How much of that do you mean to get?" and gave them the difference in money. In an action for wages, to which payment was pleaded, Cresswell, J., directed the jury that this mode of payment was valid. But query.) It would appear that a payment in cash, but on condition that the money be spent in the employer's shop, is within the Act. *Olding* v. *Smith* (1852), 16 Jur. 497

in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

7. And be it further enacted, that if any such artificer as aforesaid, or his wife or widow, or if any child of any such artificer, not being of the full age of twenty-one years, shall become chargeable to any parish or place, and if within the space of three calendar months next before the time when any such charge shall be incurred such artificer shall have earned or have become entitled to receive any wages for any labour by him done in any of the said trades, which wages shall not have been paid to such artificer in the current coin of this realm, it shall be lawful for the overseers or overseer of the poor in such parish or place to recover from the employer of such artificer in whose service such labour was done, the full amount of wages so unpaid, and to proceed for the recovery thereof by all such ways and means as such artificer himself might have proceeded for that purpose; and the amount of the wages which may be so recovered shall be applied in reimbursing such parish or place all costs and charges incurred in respect of the person or persons to become chargeable, and the surplus shall be applied and paid over to such person or persons.

8. Provided always, and be it further enacted, that nothing herein contained shall be construed to prevent or to render invalid any contract for the payment, or any actual payment, to any such artificer as aforesaid, of the whole or any part of his wages, either in the notes of the governor and company of the Bank of England, or in the notes of any person or persons carrying on the business of a banker, and duly licensed to issue such notes in pursuance of the laws relating to his Majesty's revenue of stamps, or in drafts or orders for the payment of money to the bearer on demand, drawn upon any person or persons carrying on the business of a banker, being duly licensed as aforesaid, within fifteen miles of the place where such drafts or orders shall be so paid, if such artificer shall be freely consenting to receive such drafts or orders as aforesaid, but all payments so made with such consent as aforesaid, in any such notes, drafts, or orders as aforesaid, shall for the purposes of this Act be as valid and effectual as if such payments had been made in the current coin of the realm.

9. And be it further enacted, that any employer of any artificer in any of the trades hereinafter enumerated, who shall, by himself or by the agency of any other person or persons, directly or indirectly enter into any contract or make any payment hereby declared illegal (*c*), shall for

(*c*) *Athersmith* v. *Drury* (1858), 1 E. & E. 46; 28 L. J. M. C. 5. (An employer, the defendant, refused money to a workman's wife, but gave her a "shop note," to take to a clerk. The clerk refused money but gave her an order for a shop, which he mentioned. The justices found that

the first offence forfeit a sum not exceeding ten pounds nor less than five pounds, and for the second offence any sum not exceeding twenty pounds nor less than ten pounds, and in case of a third offence, any such employer shall be and be deemed guilty of a misdemeanor, and, being thereof convicted, shall be punished by fine only, at the discretion of the Court, so that the fines shall not in any case exceed the sum of one hundred pounds.

10. And be it further enacted, that all offences committed against this Act, and not hereinbefore declared a misdemeanor, shall be enquired of and determined, and that all fines and penalties for such offences shall be sued for and recovered by any person or persons who shall sue for the same, before any two justices of the peace having jurisdiction within the county, riding, city, or place in which the offence shall have been committed, and that the amount of the fines, penalties, and other punishments to be inflicted upon any such offenders shall, within the limits hereinbefore prescribed, be in the discretion of such justices, or in cases of misdemeanor, of the Court before which the offence may be tried; and in case of a second offence against this Act, it shall be sufficient evidence of the previous conviction and offence, if a certificate signed by the clerk of the peace or other officer having the custody of the record of such previous conviction, shall be produced before the said justices enquiring of such second offence, in which certificate shall be stated in a compendious form the general nature of the offence for which such previous conviction was had, and the date of such previous conviction; and so in like manner, upon the trial of any indictment or information for any such misdemeanor as aforesaid, it shall be sufficient evidence of such second conviction for a like offence, if a certificate thereof, signed by the clerk of the peace or other officer having the custody of the record of such second conviction, in such form as aforesaid, be produced to the Court and jury: provided always, that no person shall be punished as for a second offence under this Act, unless

the defendant knew and intended when he gave the first note, that she was to get goods and not money. Held (by Campbell, C. J., Wightman, Erle, Hill, JJ.) that giving of the note was an offence against the Act, and was complete at the giving of the first note. *Wilson* v. *Cookson* (1863), 32 L. J. M. C. 177. It is not necessary that the payment other than in coin should be in pursuance of a contract; and if a workman of his own accord receives goods, and the master deducts the price, it is an offence under sects. 3 and 9. *Fisher* v. *Jones* (1863), 32 L. J. M. C. 177. Appellant worked for the respondent and dealt at his shop. The amounts of the purchases were deducted from appellant's pay, but he had his wages when he liked, and the taking of the goods was wholly optional. Held (by Williams, Willes, Keating, JJ.) that an offence had been committed, and that subsequent payment did not purge the offence. *Smith* v. *Walton* (1877), L. R. 3 C. P. D. 109; 47 L. J. M. C. 45; 37 L. T. 437. (An artificer within the Truck Act in the employment of the respondent wove a piece of cotton cloth which was defective; the respondent delivered to him the piece of damaged cloth instead of a part of the wages which were due to the appellant; an offence within the Act. "The respondent has deducted the whole value (of the cloth), and throughout the transaction the damaged piece is treated as part of the cost." Grove, J.)

ten days at the least shall have intervened between the conviction of such person for the first and the conviction by such person of the second offence, but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a first offence; and that no person shall be punished as for a third offence under this Act, unless ten days at the least shall have intervened between the conviction of such person for the second and the conviction by such person of the third offence; but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a second offence; and that the fourth or any subsequent offence which may be committed by any such person against this Act shall be enquired of, tried, and punished in the manner hereinbefore provided in respect of any third offence; and that if the person or persons preferring any such information shall not be able or shall not see fit to produce evidence of any such previous conviction or convictions as aforesaid, any such offender as aforesaid shall be punished for each separate offence by him committed against the provisions of this Act by an equal number of distinct and separate penalties, as though each of such offences were a first or second offence, as the case may be; and that no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years from the commission of the next preceding offence.

11. And be it further enacted, that it shall be lawful for any one justice of the peace, in all cases where any information or complaint shall be made as aforesaid, and he is hereby authorised and required, at the request in writing of any of the parties to the said complaint, and on the oath of the informer or complainant, or of the person informed or complained against, that he believes that the attendance of any person or persons as a witness or witnesses will be material to the hearing of such information, to issue his summons to any such person or persons, witness or witnesses, to appear and give evidence on oath before himself and such other justice or justices as shall hear and determine such information or complaint, the time and place of hearing and determining the same being specified in the said summons; and if any person or persons so summoned shall not appear before the said last-mentioned justices at the time or place so specified in the said summons, and shall not offer any reasonable excuse for the default, to the satisfaction of the said last-mentioned justices, or appearing according to the directions of the said summons shall not submit to be examined as a witness or witnesses, then and in every such case it shall be lawful for such last-mentioned justices, and they are hereby authorised (proof on oath, in the case of any person not appearing according to such summons, having been first made before such last-mentioned justices of the due service of such summons on every such person, by delivering the same

to him or to her, or by leaving the same at the usual place of abode of such person, twenty-four hours at the least before the time appointed for such person to appear before such last-mentioned justices), by warrant under the hands and seals of such last-mentioned justices to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of the said justices, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person or persons shall submit to be examined and give evidence.

12. And be it further enacted, that all justices of the peace shall and are hereby empowered, on the conviction of any person or persons for any offence against this Act, in default of payment of any penalty or forfeiture, together with the reasonable costs and charges attending such conviction, to cause the same to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant or warrants under the hands and seals of such justices, together with the reasonable costs of such distress and sale, and in case it shall appear to the satisfaction of such justices, either by the confession of the offender or offenders or by the oath of one or more credible witness or witnesses, that he, she, or they hath not or have not goods and chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justices may, without issuing any warrant of distress, commit the offender or offenders to the common gaol for three calendar months (unless the same be sooner paid), in such manner as if a warrant of distress had been issued, and a return of *nulla bona* made thereon.

13. And be it further enacted, that no person shall be liable to be convicted of any offence against this Act committed by his or her co-partner in trade, and without his or her knowledge, privity, or consent; but it shall be lawful, when any penalty, or any sum for wages, or any other sum, is ordered to be paid, under the authority of this Act, and the person or persons ordered to pay the same shall neglect or refuse to do so, to levy the same by distress and sale of any goods belonging to any copartnership concern or business in the carrying on of which such charges may have become due or such offence may have been committed; and in all proceedings under this Act to recover any sum due for wages it shall be lawful in all cases of co-partnership for the justices, at the hearing of any complaint for the non-payment thereof, to make an order upon any one or more co-partners for the payment of the sum appearing to be due; and in such case the service of a copy of any summons or other process, or of any order, upon one or more of such co-partners, shall be deemed to be a sufficient service upon all.

14. And it is declared and enacted, that in all cases it shall be deemed and taken to be sufficient service of any summons to be issued against any offender or offenders by any justice or justices of the peace, under the authority of this Act, if a duplicate or true copy of the same be left

at or upon the place used or occupied by such offender or offenders for carrying on his, her, or their trade or business, or at the place of residence of any such offender or offenders, being at or upon any such place as aforesaid, the same being directed to such offender or offenders by his, her, or their right or assumed name or names.

15. And be it further enacted, that the justices before whom any person shall be convicted of any offence against this Act, or by whom any person shall be committed to the common gaol, in default of a sufficient distress, or for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the summonses for the attendance of witnesses, and the warrants or orders for such commitments, and the warrant or order for any such distress, to be drawn up in the form or to the effect set forth in the schedule to this Act annexed, with such additions or variations as may be necessary for adapting the same to the particular circumstances of the case.

16. And be it further enacted, that the justices before whom any conviction shall be had under this Act shall cause the same to be returned to the next general or quarter sessions of the peace holden for the county or place wherein the offence shall have been committed, and the same shall then and there be delivered to the clerk of the peace, or other person acting as such, to be by him filed among the records of the said Court; and such clerk of the peace, or other person acting as such, is hereby required, on the tender and payment to him of the sum of one shilling, to grant to any person or persons, on demand, a copy of any such conviction, with a certificate thereupon indorsed or thereunto annexed, that the same is a true and accurate copy of the original conviction returned to such general or quarter sessions as aforesaid.

17. And be it further enacted, that no conviction, order, or adjudication made by any justice of the peace under the provisions of this Act shall be quashed for want of form, nor be removed by *certiorari* or otherwise into any of his Majesty's superior Courts of record; and no warrant of distress, or of commitment in default of sufficient distress, shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

18. And be it further enacted, that out of any penalty or forfeiture incurred by any offence committed against this Act, it shall be lawful for the Court or justices imposing the same to award any sum to the informer, not exceeding in any case the sum of twenty pounds; and the rest of any such pecuniary penalty or forfeiture shall go to the treasurer of the county in which the offence shall be committed, in aid of the rates of such county: provided always, that every proceeding whatsoever for any offence against this Act shall be commenced within three calendar months after such offence shall have been committed.

19. And be it further enacted, that nothing herein contained shall extend to any artificer, workman, or labourer, or other person engaged

or employed in any manufacture, trade, or occupation, excepting only artificers, workmen, labourers, and other persons employed in the several manufactures, trades, and occupations following; (that is to say), in or about the making, casting, converting, or manufacturing of iron or steel, or any parts, branches, or processes thereof; or in or about the working or getting of any mines of coal, ironstone, limestone, salt rock; or in or about the working or getting of stone, slate or clay; or in the making or preparing of salt, bricks, tiles, or quarries; or in or about the making or manufacturing of any kinds of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter, or other metal, or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any kinds of woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufactures whatsoever, or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed one with another; or in or about the making or otherwise preparing, ornamenting, or finishing of any glass, porcelain, china, or earthenware whatsoever, or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of bone, thread, silk or cotton lace, or of lace made of any mixed materials.

20. And be it further enacted, that nothing herein contained shall extend to any domestic servant or servant in husbandry.

21. And be it further enacted, that no justice of the peace, being a person also engaged in any of the trades or occupations enumerated in this Act, or the father, son, or brother of any such person, shall act as a justice of the peace under this Act.

22. And be it further enacted, that in all cities, boroughs, or corporate towns, where the magistrates for the time being are disqualified by the foregoing clause from administering this Act, then and in every such case, and so often as the same shall happen, it shall be lawful for the magistrates of the county in which the offence may be committed (and not disqualified as aforesaid) to administer, and they are hereby authorised and empowered to hear, examine, and determine, any offences committed against this Act, in any such cities, boroughs, or corporate towns; and it shall be lawful for the complainant to remove the cases of information or complaint from the said cities, boroughs, or corporate towns to any other Court of session or petty session not exceeding twelve miles from the place where the offence shall have been committed; any law, charter, usage, or custom to the contrary notwithstanding.

23. And be it further enacted and declared, that nothing herein con-

tained shall extend or be construed to extend to prevent any employer of any artificer, or agent of any such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificers be employed in mining, or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade and occupation ; nor from demising to any artificer, workman, or labourer employed in any of the trades or occupations enumerated in this Act the whole or any part of any tenement at any rent (*d*) to be thereon reserved ; nor from supplying or contracting to supply to any such artificer any victuals dressed or prepared under the roof of any such employer, and there consumed by such artificer ; nor from making or contracting to make any stoppage or deduction from the wages (*e*) of any

(*d*) *Chawner* v. *Cummings* (1846), 8 Q. B. 311 ; 15 L. J. Q. B. 161. (Plaintiff and defendant in the glove trade ; plaintiff a framework knitter, and defendant a middleman, who provided frames at an agreed gross price per dozen frames. Defendant in settling with the plaintiff deducted out of the gross price per dozen certain charges which were according to the custom of the trade : 1, a frame rent of 1*s.* 6*d.* a week per frame used by plaintiff in his work ; 2, 1*s.* 6*d.* a week for the use of defendant's premises to work in, standing room, defendant's superintendence of work, sorting the goods when made, and redelivering them to the master manufacturer ; 3, 7*d.* a week for a boy for winding the yarn, and for wear and tear of machinery ; 4, 1*d.* per shilling on the net earnings above 14*s.* per week as compensation to defendant for sums paid by him to the master manufacturer. No written contract. Held that plaintiff was an "artificer" and defendant an "employer" within the Act ; that the above deductions, being according to the custom of the trade and not colourable, were not payments of wages within sec. 3, but customary modes of calculating the amount of the wages, and not prohibited by secs. 1—3 ; that frame rents are not "rents" within sec. 23 ; that no contract in writing was required to make these deductions legal. These deductions came before the Exchequer Chamber in *Archer* v. *James* (1862), 2 B. & S. 61 ; 31 L. J. Q. B. 153; 1 L. T. N. S. 26. (The decision in *Chawner* v. *Cummings* was reviewed in the Exchequer Chamber. Three judges (Williams, Willes, and Keating, JJ.) held that the deductions were illegal, and delivered a joint judgment to the effect that the benefits represented by the deductions—viz., the rent of frame and machine, fire, light, &c.—were given for work done, and that these deductions were contrivances by means of which the master made the interest of part of his capital a first charge upon the labour of his workmen. Byles, J., Bramwell, B., and Pollock, C.B., delivered separate judgments confirming the decision below, and in conformity with *Chawner* v. *Cummings*. To meet this the 37 & 38 Vict. c. 48 (Hosiery Manufacture Wages Act) was passed).

(*e*) *Cutts* v. *Ward* (1867), L. R. 2 Q. B. 357 ; 36 L. J. Q. B. 161. (Plaintiff signed rules of the colliery, which authorised the deduction from wages of rent of house, and charges for tools, materials, and medical attendance generally, without specification of particulars. Held that deductions for rent and club for providing medicines were legal, that parol evidence of them might be given, and that it was not necessary to specify the amounts to be deducted under each head on the written contract ; but that the deduction for wood to be used in propping the roof was illegal. "What the Legislature contemplated

such artificer, for or in respect of any such rent; or for or in respect of any such medicine or medical attendance; or for or in respect of such fuel, materials, tools, implements, hay, corn, or provender, or of any such victuals dressed and prepared under the roof of any such employer; or for or in respect of any money advanced to such artificer for any such purpose as aforesaid: provided always, that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not be in any case made from the wages of such artificer, unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer.

24. And be it further enacted and declared, that nothing herein contained shall extend or be construed to extend to prevent any such employer from advancing to any such artificer any money to be by him contributed to any friendly society or bank for savings duly established according to law, nor from advancing to any such artificer any money for his relief in sickness, or for the education of any child or children of such artificer, nor from deducting or contracting to deduct any sum or sums of money from the wages of such artificer for the education of any such child or children of such artificer, and unless the agreement or contract for such deduction shall be in writing, and signed by such artificer.

25. And be it further enacted and declared, that in the meaning and for the purposes of this Act all workmen, labourers, and other persons in any manner engaged in the performance of any work, employment, or operation, of what nature soever, in or about the several trades and occupations aforesaid, shall be and be deemed "artificers;" and that within the meaning and for the purposes aforesaid all masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers, shall be and be deemed to be "employers;" and that within the meaning and for the purposes of this Act any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, shall be deemed and taken to be the "wages" of such labour; and

was a sale out and out, and not a contract for hiring materials." *Pillar v. Llynvi Coal Co.* (1869), L. R. 4 C. P. 752; 28 L. J. C. P. 294. (Plaintiff was paid partly in small cheques, which he could not cash except at defendants' shop, and then only by taking 16*s.* in the pound in goods. The defendants deducted, without any written contract, sums for coals, medical assistance and schooling. Held that the giving of the cheques was a mere subterfuge to enable the defendants to pay the plaintiff part of his wages in goods; that occasional deductions in respect of coals and materials formed no part of system of payment, and could not be recovered; and that the "artificer" was entitled to recover the whole of the deductions for doctor's funds and schooling.)

that within the meaning and for the purposes aforesaid any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

26. And be it further enacted, that this Act shall not commence or take effect till the expiration of three calendar months next after the day of passing the same.

27. And be it further enacted, that the provisions of this Act shall extend over the whole of that part of the United Kingdom of Great Britain and Ireland called Great Britain.

SCHEDULE referred to in the foregoing Act.

Form of Conviction.

} BE it remembered that on this day of
to wit. } in the year of our Lord at
in the county of A. B. is duly convicted before us, C. D. and J. G., two of his Majesty's justices of the peace for the of for that the said A. B. [*specify the offence, and the time and place when and where committed*], whereby the said A. B. has forfeited the sum of this being adjudged to be the first [*or* second] offence [*as the case may be*] against the provisions of an Act to prohibit the payment of wages in goods, besides the cost of this conviction, which we assess at the sum of [*here state to whom and in what proportions the penalty and costs are to be paid*] pursuant to the statute in that case provided.

Given under our hands and seals,

Summons to Witness.

} WHEREAS information upon oath hath been made before
to wit. } me, A. B. Esquire, one of his Majesty's justices of the peace for the county aforesaid, that C. D. of has been guilty of an offence against the laws prohibiting the payment of wages in goods, and that you are a material witness to be examined on the hearing and determination of such information: These are therefore to require you to appear personally before me, and such other justice or justices as shall hear and determine such information, at in the county aforesaid, on the day of at the hour of of the same day, there to be examined touching the matters alleged in such information. As witness my hand,

Warrant of Commitment of a Witness.

to wit. } To the constable or other proper officer and to the keeper or gaoler of .

Whereas C. D. hath been duly summoned to appear and give evidence before us, A. O. and G. F., two of his Majesty's justices of the peace for the county [*or* riding, city, division, *or* place] of on this day of being the time and place appointed for hearing and determining the complaint made on the oath of before us, against A. B., of having [*stating the offence as laid in the information*] contrary to the laws now in force for prohibiting the payment of wages in goods: And whereas the said C. D. hath not appeared before us at the time and place aforesaid specified for that purpose, or offered any reasonable excuse for his default [*or*]: And whereas the said C. D. having appeared before us at the time and place aforesaid specified for that purpose, hath not submitted to be examined as a witness and give his evidence before us touching the matter of the said complaint, but hath refused so to do [*or*]; Therefore we the said justices do hereby, in pursuance of the statute made, *&c.* [*setting forth the title of this Act*] commit the said C. D. to the [*describing the prison*] there to remain, without bail or mainprize, for his contempt aforesaid, for the space of three calendar months, or until he shall submit himself to be examined and give his evidence touching the matter of the said complaint, or shall otherwise be discharged by due course of law. And you [*the constable or peace officer to whom the warrant is directed*] are hereby authorized and required to take into your custody the body of the said C. D., and him safely to convey to the said prison, and him there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D., and him safely to retain and keep, pursuant to this commitment. Given under our hands and seals, this day of in the year of our Lord

Warrant to Distrain for Forfeiture.

to wit. } To the constable [headborough] *or* [tithingman of

Whereas A. B. of is this day convicted before us, C. D. and J. G., two of his Majesty's justices of the peace in and for the said county, upon oath of H. K., a credible witness, for that the said A. B. did [*here set forth the offence*], contrary to the statute in that case made and provided, by reason whereof the said A. B. hath forfeited the sum of to be distributed as herein is mentioned, besides the sum of for costs, both of which he hath refused to pay; These are therefore, in his Majesty's name, to command you to levy the said sum of and also the sum of for costs, by distress of

the goods and chattels of him the said A. B. ; and if within the space of days next after such distress by you taken, the said sums, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do retain the said costs, and also the said forfeiture or sum of and thereout pay to L. M., who hath informed and prosecuted in this case, the sum of being his adjudged portion of such forfeiture, the residue whereof is to go to the treasurer of the said county of , in aid of the rates thereof ; and that you do return the overplus, on demand, to him the said A. B. (the reasonable charges of taking, keeping, and selling the said distress being first deducted) ; and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of , that then you certify the same to us, together with this warrant.

Given under our hands and seals,

Commitment for Want of Distress.

} To the [constable] of in the said county, and
to wit. } to the keeper of the common gaol [*or* the house of correction] at in the said county.

Whereas A. B. of in the said county was on the day of convicted before us, C. D. and J. G., two of his Majesty's justices of the peace in and for the said county, upon the oath of H. K., a credible witness, for that he the said A. B. [*here set forth the offence*], contrary to the statute made in the year of the reign of his Majesty King William the Fourth, by reason whereof the said A. B. hath forfeited the sum of besides the sum of for costs : and whereas on the day of in the year aforesaid we did issue our warrant to the [constable] of to levy the said sum of and costs, by distress and sale of the goods and chattels of him the said A. B., and to distribute the same according to the directions of the said statute : And whereas it duly appears to us, upon the oath of the said [constable], that the said [constable] hath used his best endeavours to levy the said sum on the goods and chattels of the said A. B. as aforesaid, but that no sufficient distress can be had whereon to levy the same [*or* by confession of the said A. B., *or* by the oath of a credible witness, that the said A. B. hath not goods and chattels within our jurisdiction whereon to levy the said forfeiture and costs] ; These are therefore to command you the said [constable] of aforesaid to apprehend the said A. B., and him safely to convey to the common gaol [*or* house of correction] at in the said county, and there to deliver him to the keeper thereof, together with this precept, and we do also command you the said keeper to receive and

keep in your custody the said A. B. for the space of three months, unless the said sum and costs shall be sooner paid ; and for so doing this shall be your sufficient warrant. Given under our hands and seals,

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8 & 9 VICT. c. 128 (1845).

An Act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases.

Section 1 cites 5 George IV., c. 96, and enacts that, " When any manufacturer of silk goods or of goods made of silk mixed with other materials, or the agent of any such manufacturer, gives out to a weaver of such goods a piece of warp to be woven, such manufacturer or agent shall at the same time deliver to such weaver (unless both parties shall by writing under their respective hands agree to dispense therewith) a printed or written ticket, signed by such manufacturer or agent, containing the following particulars of the agreement between such manufacturer or agent and such weaver ; (that is to say,) the count or richness of the warp or cane : The number of shoots or picks required in each inch ; The number of threads of weft to be used in each shoot ; The name of the manufacturer, or the style of the firm under which he carries on business : The weaver's name, with the date of the engagement ; And the price in sterling money agreed on for executing each yard imperial standard measure of thirty-six inches of such work in a workmanlike manner : And such manufacturer or agent delivering such ticket shall make or cause to be made, and shall preserve until the work contracted to be done shall have been completed or paid for, a duplicate of such note or ticket.

2. That in the event of any dispute between the manufacturer or his agent and the workmen, such ticket and the said duplicate thereof shall be required to be produced, and shall, together or either of them, be evidence of all things mentioned therein, or respecting the same.

3. Provided always, that where the subject of dispute relates to the alleged improper or imperfect execution of any work delivered to any manufacturer or his agent, such piece of work shall be produced, in order to adjudication, or if not produced shall be deemed and taken to have been sufficiently and properly executed.

4. That if any of the parties to the said complaint shall make oath before any justice, having cognizance of such complaint, that he or she believes that the attendance of any person as a witness will be material to the hearing of such complaint, such justice may summon such person, having been paid or tendered a reasonable sum for his expenses, to appear and give evidence on oath before him at the time and place set forth in the said summons ; and if any person so summoned shall not

appear at the time and place set forth in the said summons, and shall not make excuse for the default to the satisfaction of such justice, and if the due service of the summons be proved, or if such person appearing according to the summons shall not submit to be examined as a witness, then such justice may adjudge such person so making default in appearing or refusing to give evidence to pay such penalty, not exceeding five pounds, as such justice shall think fit, and the party so adjudged to pay such penalty shall pay the same accordingly.

5. That every summons required by this Act shall be served by delivering the same to the person summoned, or by leaving the same at his or her usual place of abode, twenty-four hours at least before the time appointed by the summons for such person to appear.

6. That if any such penalty or costs so adjudged by any justice to be paid is not paid immediately upon adjudication, such justice may issue his warrant to distrain and sell the goods and chattels of the person so adjudged to pay the same for the amount thereof, with costs ; and the proceeds of such distress, after paying the penalty and costs, and the costs of such distress and sale, shall be paid over to the person convicted ; and the said penalty shall be paid over to the sheriff or other proper officer of the county, city, borough, or place in which such conviction shall take place, for her majesty's use, and shall be returned to the court of quarter sessions, under the provisions of an Act passed in the third year of the reign of King George the Fourth, intituled "An Act for the more speedy Return and Levying of Fines, Penalties, and Forfeitures, and Recognizances estreated."

7. (Recovery of wages and sums due for work—Repealed by 38 & 39 Vict. c. 86, s. 17, *post.*)

8. That no order or conviction or proceeding touching the same respectively, shall be quashed for want of form, or be removed by certiorari or otherwise into any of Her Majesty's superior courts of record ; and that when any distress shall have been made for levying any money by virtue of this Act the distress itself shall not be deemed unlawful, nor the party making the same a trespasser, on account of any defect or want of form in the summons, warrant, conviction, warrant of distress, or other proceedings in relation thereto, nor shall the party distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for special damage (if any) by action on the case.

37 & 38 VICT. c. 48 (1874).

An Act to provide for the payment of wages without stoppages in the hosiery manufacture.

WHEREAS a custom has prevailed among the employers of artificers in the hosiery manufacture of letting out frames and machinery to the artificers employed by them, and it is desirable to prohibit such letting of frames and machinery, and the stoppage of wages for frame rents and charges in the hosiery manufacture. Be it enacted as follows :

1. In all contracts for wages the full and entire amount of all wages, the earnings of labour in the hosiery manufacture, shall be actually and positively made payable in net, in the current coin of the realm, and not otherwise, without any deduction or stoppage of any description whatever, save and except for bad and disputed workmanship.

2. All contracts to stop wages, and all contracts for frame rents and charges, between employers and artificers, shall be and are hereby declared to be illegal, null, and void.

3. If any employer shall bargain to deduct, or shall deduct, directly or indirectly, from the wages of any artificer in his employ, any part of such wages for frame rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer or any other person suing for the same in the county court in the district where the offence is committed, with full costs of suit.

4. If any frame or machine which shall have been entrusted to any artificer or other person by his employer for the purpose of being used in the hosiery manufacture for such employment, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then and in every such case the artificer or other person to whom the same shall have been so entrusted, shall forfeit and pay the sum of ten shillings for every day on any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the county court for the district where the offence shall have been committed, with full costs of suit.

5. No action, suit, or set-off between employer and artificer shall be allowed for any deduction or stoppage of wages, nor for any contract hereby declared illegal.

6. Nothing in this Act contained shall extend to prevent the recovery

in the ordinary course of law, by suit brought or commenced for the purpose, of any debt due from the artificer to the employer.

7. Within the meaning and for the purpose of this Act, all workmen, labourers, and other persons in any manner engaged in the performance of any employment or operation, of what nature soever, in or about the hosiery manufacture, shall be and be deemed "artificers;" and, within the meaning and for the purposes aforesaid, all masters, foremen, managers, clerks, contractors, sub-contractors, middlemen, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificer shall be and be deemed to be "employers;" and, within the meaning and for the purposes of this Act, any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or for an amount uncertain, shall be deemed and taken to be the wages of such labour; and, within the meaning and for the purposes aforesaid, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificers are parties, or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

8. This Act shall not commence or take effect till the expiration of three calendar months next after the day of passing the same.

9. This Act may be cited for all purposes as "The Hosiery Manufacture (Wages) Act, 1874" (*a*).

(*a*) *Willis* v. *Thorp* (1875), L. R. 10 Q. B. 383; 44 L. J. Q. B. 137. (Plaintiff, a hand frame worker in the employment of defendants, hosiery manufacturers; by the regulations of the factory, he was liable to a fine of 8*d*. a day for staying away from work without permission; plaintiff was fined for so staying away; such deduction of wages not within section 3, and defendants not liable to a fine). See section 11 of the Employers' and Workmen Act, 1875, 38 & 39 Vict. c. 90.

CHAPTER V.

ACTS RELATING TO CHIMNEY SWEEPERS.

3 & 4 VICT. c. 85 (1840).

An Act for the Regulation of Chimney Sweepers and Chimneys (*a*).

1. [*Continuance of* 4 & 5 *W.* 4, c. 35, *till* 1*st day of July*, 1842.]

2. That from and after the 1st day of July, 1842 (*b*), any person who shall compel or knowingly allow any child or young person under the age of twenty-one years to ascend or descend a chimney, or enter a flue, for extinguishing fire therein, shall be liable to a penalty of not more than ten pounds [*or* less than five pounds (*c*)].

3. That from and after the passing of this Act it shall not be lawful to apprentice to any person using the trade or business of a chimney-sweeper any child under the age of sixteen years, and that every indenture of such apprenticeship which may be entered into on and after such date shall be null and void.

4. [Power to justice of the peace at any time between the 1st July, 1841, and 1st July, 1842, to discharge from his or her apprenticeship any child apprenticed to any person using the trade or business of a chimney sweeper.—Repealed by Stat. Law Rev. Act, 1874, No. 2.]

5. [That from and after the 1st day of July, 1842, all existing indentures of apprenticeship to the trade or business of a chimney sweeper of any child who shall then be under the age of sixteen years shall be null and void.—Repealed by Stat. Law Rev. Act, 1874, No. 2.]

6. And whereas it is expedient, for the better security from accidents from fire or otherwise, the improved construction of chimneys and flues provided by the said Act be continued: Be it enacted, that all withs and partitions between any chimney or flue, which at any time after the passing of this Act shall be built or rebuilt, shall be of brick or stone, and at least equal to half a brick in thickness; and every breast-back and with or partition of any chimney or flue hereafter to be built or rebuilt shall be built of sound materials, and the joints of the work well filled in with good mortar or cement, and rendered or stuccoed within; and also that every chimney or flue hereafter to be built or rebuilt in

(*a*) See 37 & 38 Vict. c. 96.
(*b*) See note (*a*).
(*c*) See 37 & 38 Vict. c. 96.

any wall, or of greater length than four feet out of the wall, not being a circular chimney or flue twelve inches in diameter, shall be in every section of the same not less than fourteen inches by nine inches; and no chimney or flue shall be constructed with any angle therein which shall be less obtuse than an angle of one hundred and twenty degrees, except as is hereinafter excepted; and every salient or projecting angle in any chimney or flue shall be rounded off four inches at the least, upon pain of forfeiture, by every master builder or other master workman who shall make or cause to be made such chimney of flue, of any sum of not less than ten pounds nor exceeding fifty pounds: Provided, nevertheless, that, notwithstanding this Act, chimneys or flues may be built at angles with each other of ninety degrees and more, such chimneys or flues having therein proper doors or openings not less than six inches square (*d*).

7. That all convictions for penalties for any offence against this Act may be had before two or more justices of the peace acting for the county, riding, city, borough, division, or place where the offence shall happen, or before the sheriff or stewart of any county or stewartry in Scotland; and such penalties, and the costs and charges attending the recovery thereof, shall be levied by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, by warrant under the hands and seals of two or more of the said justices, or under the hand of any such sheriff or stewart, rendering the overplus of such distress and sale (if any) to the party or parties, after deducting the charge of making the same, which warrant such justices or sheriffs or stewarts are hereby empowered and required to grant, upon conviction of the offender by confession, or oath of one or more credible witness or witnesses; and the penalties, costs, and charges, when so levied, shall be paid, the one half to the informer, and the other half to the overseers or managers of the poor of the parish, township, or place where the offender shall dwell and inhabit, to be by such overseers or managers applied in aid of the rate or assessment raised for the relief of the poor of such parish, township, or place, and in Scotland, in parishes where there shall be no assessment for the relief of the poor, as the said managers shall direct, or to her Majesty in case there shall be no such overseer or manager.

8. That the justices of the peace or sheriffs or stewarts by whom any person shall be convicted and adjudged to pay any sum of money for any offence against this Act may adjudge that such person shall pay the same, together with costs, either immediately, or within such period as the said justices shall think fit; and that, in default of payment at the time appointed, such person shall be imprisoned in the common gaol or house of correction (with or without hard labour), as to the said justices or sheriffs or stewarts shall seem meet, for any time not

(*d*) See 7 & 8 Vict. c. 84, s. 1, and 18 & 19 Vict. c. 122, s. 109.

exceeding two calendar months; the commitment to be determinable upon payment of the amount of the penalty and costs.

9. [That no inhabitant of any parish, township, or place shall be deemed an incompetent witness in any suit, action, information, complaint, appeal, prosecution, or proceeding to be had, made, prosecuted, or carried on under the authority of this Act, for any offence committed within such parish, township, or place, by reason of such person being rated or assessed to, or liable to be rated or assessed to, or being otherwise interested in, the rates or assessments of any such parish, township, or place (*e*).]

10. That where any distress shall be made for any sum or sums of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any default or want of form in any proceedings relating thereto, nor shall the party or parties distraining be deemed a trespasser or trespassers from the beginning on account of any irregularity which shall be afterwards done by the party or parties distraining; but the person or persons aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case, to be brought in some of the courts of record at Westminster or Dublin, or by action raised or complaint preferred in the court of session in Scotland: Provided always, that no plaintiff or plaintiffs shall recover in any action for any such irregularity, trespass, or wrongful proceeding if tender of sufficient amends for any such special damage shall be made by or on behalf of the party or parties who shall have committed or caused to have been committed any such irregularity or wrongful proceeding before such action or complaint brought; and in case no such tender shall have been made, it shall be lawful for the defendant or defendants in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he or they shall see fit, whereupon such proceedings or orders and judgments shall be had, made, and given in, and by such courts as in other actions where the defendant is allowed to pay money into court.

11. That any person who shall think himself or herself aggrieved by any conviction by any justice or justices of the peace under this Act may appeal to the next court of general or quarter sessions of the peace which shall be holden, not less than twelve days after the day of such conviction, for the county, stewartry, riding, city, borough, division, or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such session, and shall also either remain in custody until the session, or enter into recognizance, with two sufficient sureties, before a justice of the peace, conditioned

(*e*) Repealed by 37 & 38 Vict. c. 96.

personally to appear at the said session of the peace, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody, and the court at such session shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal or affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and all judgments, determinations, and proceedings of such justices not appealed from as aforesaid, and of such sheriff or stewart, or quarter sessions shall be final, and not subject to review by any process of law or court whatever, any law or usage to the contrary notwithstanding.

12. That no conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's superior courts of record: and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

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27 & 28 VICT. c. 37 (1864).

An Act to amend and extend the Act for the Regulation of Chimney Sweepers.

"Whereas by the Act of the session of the third and fourth years of her Majesty Queen Victoria, chapter eighty-five, 'for the regulation of chimney sweepers and chimneys,' provision was made to prevent any person compelling or knowingly allowing a child or young person under the age of twenty-one years to ascend or descend a chimney, or enter a flue for the purpose of sweeping, cleaning, or coring the same, or for extinguishing fire therein: And whereas it is expedient to amend in some particulars, and to extend the said Act (hereafter in this Act called the principal Act)." Be it therefore enacted as follows:—

General.

1. This Act may be cited as "The Chimney Sweepers Regulation Act, 1864," the principal Act may be cited as "The Chimney Sweepers and Chimneys Regulation Act, 1840;" and the principal Act and this Act may be cited together as "The Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864."

2. This Act shall commence and take effect on the 1st day of November, 1864.

3. In this Act—

The term "sheriff" includes steward:

The term "chimney sweeper" means a person using the trade or business of a chimney sweeper.

4. This Act shall be construed together with the principal Act as one Act, and for this purpose the expression "this Act," when used in the principal Act, shall be taken to include the present Act.

5. Any pecuniary penalty recovered under this Act shall be applied as directed in the principal Act.

Protection of Children and Young Persons.

6. It shall not be lawful for a chimney sweeper to employ a child under the age of ten years to do or assist in doing any work or thing in or about the trade or business of such chimney sweeper, or the yard or building (if any) connected therewith.

7. It shall not be lawful for a chimney sweeper, on any occasion of his entering a house or building for the purpose of sweeping, cleaning, or coring a chimney or flue, therein or belonging thereto, or for extinguishing fire in any such chimney or flue, to cause or knowingly allow a person under the age of sixteen years in his employment or under his control to enter before, with, or after him into any part of such house or building, or to be therein for any part of the time during which such chimney sweeper himself continues therein for any such purpose as aforesaid.

8. If any chimney sweeper acts in contravention of either of the foregoing enactments, he shall for every such offence be liable to a penalty not exceeding ten pounds.

9. Where under section 2 of the principal Act a chimney sweeper is convicted of the offence of compelling or knowingly allowing a person under the age of twenty-one years to ascend or descend a chimney or enter a flue for any purpose in that section mentioned, the justices or sheriff before whom he is convicted may, in lieu of the imposition of any such pecuniary penalty as is authorised by that section, adjudge the offender to be imprisoned in the common gaol or House of Correction for any term not exceeding six months, with or without hard labour.

10. In any prosecution of a chimney sweeper for any offence against the principal Act or against this Act, where the age of any young person or child comes in question, the proof of the age of such young person or child shall lie on the defendant.

11. Section 2 of the principal Act shall be read as if the words "or less than five pounds" were omitted therefrom.

38 & 39 VICT. c. 70 (1875).

An Act for further Amending the Law Relating to Chimney Sweepers.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited as The Chimney Sweepers Act, 1875.

2. This Act shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and seventy-five.

3. This Act shall not extend to Scotland.

4. In this Act—

"Justice" means a justice of the peace or magistrate having jurisdiction in the county or place where the matter requiring the cognisance of a justice arises :

"Court of summary jurisdiction" means justices or magistrate (however designated) acting under the Summary Jurisdiction Acts described in the schedule to this Act.

Certificates.

5. The chief officer of police in each police district, as defined in the schedule to this Act, may, subject to the provisions of this Act, issue a certificate authorising the person therein named to carry on the business of a chimney sweeper in the district.

6. Every person who carries on the business of a chimney sweeper, and who employs any journeyman, assistant, or apprentice, shall take out a certificate as hereinafter mentioned.

7. A person desirous of having a certificate for a district may apply for one to the chief officer of police for the district, by delivering the application at the police station for the district nearest to the applicant's dwelling-place.

The application shall be in the form given in the schedule to this Act, or to the like effect, and shall set forth the particulars therein indicated.

Thereupon a certificate shall be delivered to the applicant in the form given in the schedule to this Act, or to the like effect, signed by the chief officer of police.

8. Where two or more persons carry on the business of a chimney sweeper in partnership, it shall be sufficient for them to have one

certificate for all the partners, and the forms given in the schedule to this Act may be altered accordingly.

9. Notwithstanding anything in this Act, it shall not be necessary for a person who carries on the business of a chimney sweeper, in the capacity only of a journeyman of or assistant to a master chimney sweeper, to have a certificate: Provided, that such journeyman or assistant does not employ in chimney sweeping any other person as his paid assistant or as his apprentice.

10. Every person to whom a certificate is issued shall on the issue thereof pay a fee of two shillings and sixpence.

The fees received shall be applied as penalties under this Act are applicable.

11. Every certificate shall be dated the day of issue, and shall be in force for one year from its date, and no longer.

12. One of her Majesty's principal Secretaries of State may, if he thinks fit, direct that all certificates be made to expire yearly on the same day.

If he does so, he shall provide—

(1.) In the case of a certificate issued for less than a year, for apportionment of the fee payable thereon:

(2.) For the issue of a certificate instead of a certificate lost or destroyed, and apportionment of the fee payable thereon.

13. The holder of a certificate for one district, who is desirous of carrying on the business of a chimney sweeper in any other district, may forward his certificate to the chief officer of police for such other district for endorsement; and such chief officer shall thereupon endorse and return it without charging any fee, and a certificate so endorsed shall be of the same validity for such last-mentioned district as if it had been originally issued for the same district.

14. Each chief officer of police shall keep a register of the certificates issued or endorsed by him.

It shall be in such form and shall show such particulars as one of her Majesty's principal Secretaries of State from time to time directs, and every such register shall be presumed to be in conformity with such directions until the contrary is shown.

An entry in it, and a copy of such an entry purporting to be certified as a true copy by the chief officer of police, and a statement purporting to be signed by the chief officer of the absence of such an entry in any case, shall be evidence of the matters therein appearing.

Offences.

15. Every person who carries on such trade or business of chimney sweeper as is hereinbefore specified without having such certificate shall be guilty of an offence against this Act, and shall, on conviction thereof in a court of summary jurisdiction, be liable for the first offence to a

penalty not exceeding ten shillings, and for every subsequent offence to a penalty not exceeding twenty shillings.

16. Every person carrying on the business of such chimney sweeper as aforesaid shall, when required by any person for whom he acts or offers to act as a chimney sweeper, or by any justice, or constable or peace officer, give his name and address.

If any such person fails so to do, or gives a false name or false address, he shall be guilty of an offence against this Act, and shall, on conviction thereof in a court of summary jurisdiction, be liable to a penalty not exceeding ten shillings.

17. Where such person carries on the business of a chimney sweeper as aforesaid, he shall, on demand, produce and show his certificate (if any) to any person for whom he acts or offers to act as a chimney sweeper, and to any justice, or constable or peace officer, and allow it to be read and copied by the person to whom it is produced.

If he fails to do so he shall be guilty of an offence against this Act, and shall, on conviction thereof in a court of summary jurisdiction, be liable for the first offence to a penalty not exceeding ten shillings, and for every subsequent offence to a penalty not exceeding twenty shillings.

18. It shall not be lawful for a person having a certificate to lend or transfer it to another.

It shall not be lawful for any person to borrow, accept, or use a certificate issued to another.

If any person acts in contravention of this section he shall be guilty of an offence against this Act, and shall for every such offence, on conviction thereof in a court of summary jurisdiction, be liable to a penalty not exceeding twenty shillings.

19. If any person does any of the following things he shall be guilty of an offence against this Act :

(1.) If he makes, or procures to be made, or aids in making, a false statement or representation, knowing it to be false, in any application for a certificate :

(2.) If he fabricates, or counterfeits, or alters, or procures to be fabricated, or counterfeited, or altered, or aids in fabricating, or counterfeiting, or altering a certificate :

(3.) If he carries, produces, or shows, a fabricated, or counterfeited, or altered certificate, knowing it to be such :

and every person so offending shall, on conviction thereof in a court of summary jurisdiction, be liable for the first offence to a penalty not exceeding forty shillings, and for every subsequent offence to the like penalty, with or without imprisonment for a term not exceeding six months, with or without hard labour, or to such imprisonment alone, with or without hard labour.

20. If any person having a certificate is convicted of an offence against the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864,

or either of them, the court or justice before whom he is convicted may, if it seems fit, deprive him of his certificate for the residue of the current year; and if any person not having a certificate is convicted of an offence against the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864, or either of them, the court or justice before whom he is convicted may, if it thinks fit, in addition to imposing any other penalty which it may be authorised to impose, declare him disqualified to hold any certificate under this Act for any term not exceeding one year; but such deprivation or disqualification shall be suspended pending any appeal under section eleven of the Chimney Sweepers and Chimneys Regulation Act, 1840, and shall be in the discretion of the court of appeal in case the conviction is confirmed.

21. The chief officer of police shall enforce and put in execution the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864, without prejudice to the right of any other person to institute proceedings thereunder.

Ireland.

22. In Ireland the Lord Lieutenant or other chief governor or governors of Ireland for the time being shall have power and authority under this Act in lieu of one of her Majesty's Principal Secretaries of State.

23. Penalties recovered in Ireland shall be applied according to the Fines Act (Ireland), 1851, or any Act amending the same.

Savings.

24. A person shall not be exempt from the provisions of any Act relating to idle or disorderly persons, or to rogues or vagabonds, by reason only that he has a certificate under this Act, or assists or accompanies a person having such a certificate.

25. Nothing in this Act shall interfere with the operation of any other Act in force in any city, town, or other place, or take away or abridge any power vested in any local authority by any general or local Act.

THE SCHEDULE.

PART I.

Police Districts and Officers.

Police District.	Chief Officer of Police.
In England.	
The city of London, and the liberties thereof, exclusive of Southwark.	The Commissioner of Police of the City.
The Metropolitan Police District.	The Commissioner of Police of the Metropolis.
Any county, any riding, parts, division, or liberty of a county, any borough, or town maintaining a separate police force.	The chief constable or head constable, or other officer, by whatever name called, having the chief command of the police in the district.
In Ireland.	
The police district of Dublin metropolis.	Either of the commissioners of police for the district.
Any district, whether city, town, or county, over which is appointed a sub-inspector of the Royal Irish Constabulary.	The sub-inspector.

All the police under one chief constable constitute one police force for the purposes of this schedule.

PART II.

Summary Jurisdiction Acts.

I.—*England.*

11 & 12 Vict. c. 43.—An Act to facilitate the performance of the duties of Justices of the Peace out of sessions within England and Wales with respect to summary convictions and orders.

Any Acts amending the same.

II.—*Ireland.*

Within the police district of Dublin metropolis, the Acts relating to the powers and duties of justices for that district or the police of their district.

Elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851.

Any Acts amending the same.

PART III.

Forms.

(A).—*Application for Certificate.*

I *A. B.* [*names of applicant in full*] of [*dwellingplace*] hereby apply for a certificate under the Chimney Sweepers Act, 1875, to authorise me to act as a chimney sweeper within police district; and I declare that the following statement is true and correct:

Names of all Apprentices and others in my employment.	Ages of those under 21.	Date and Term of Apprenticeship.
A.B. Apprentice	17	.....18 .
C.D. Journeyman		[ ] years.
E.F.		

Dated this day of , 18 .

(Signed) *A. B.*

(B.)—*Certificate.*

In pursuance of the Chimney Sweepers Act, 1875, I hereby certify that *A. B.* [*names of applicant in full*] of , in the county of , is authorised to carry on the business of a chimney sweeper within the police district for one year, reckoned from the date of this certificate.

Dated the day of , 18 .

(Signed) *C.D.*,
Police Officer.

CHAPTER VI.

ACTS RELATING TO EMPLOYMENT IN MINES.

COAL MINES REGULATION ACT.

35 & 36 VICT. c. 76 (1872).

An Act to consolidate and amend the Acts relating to the Regulation of Coal Mines and certain other Mines.

WHEREAS it is expedient to consolidate and amend the law relating to the regulation and inspection of coal mines and certain other mines :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited as "The Coal Mines Regulation Act, 1872."

2. This Act, except as herein-after provided, shall not come into operation in England and Scotland until the first day of January, one thousand eight hundred and seventy-three, and in Ireland until the first day of January, one thousand eight hundred and seventy-four, which dates are in this Act respectively referred to as the commencement of this Act.

3. This Act shall apply to mines (*a*) of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay.

PART I.

Employment of Women (*b*), *Young Persons, and Children.*

4. No boy under the age of ten years, and no woman or girl of any

(*a*) See s. 70 ; also Home Office Circular of 28th Nov., 1872. As to difference between "mine" and "quarry," *Bell* v. *Wilson*, 2 Dr. & Sm. 395 ; and on appeal, L. R. 1 Ch. 303 ; *Att.-Gen. of Isle of Man* v. *Mylechreest*, L. R. 4 Ap. 294.

(*b*) See s. 72. In Factory Act, 41

age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground.

5. A boy of the age of ten and under the age of twelve years shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground, except in a mine in which a Secretary of State, by reason of the thinness of the seams of such mine, considers such employment necessary, and by order, published as he may think fit, for the time being allows the same, nor in such case

(*a.*) for more than six days in any one week ; or,

(*b.*) if he is employed for more than three days in any one week for more than six hours in any one day ; or,

(*c.*) in any other case for more than ten hours in any one day ; or,

(*d.*) otherwise than in accordance with the regulations hereinafter contained (*c*).

6. A boy of the age of twelve and under the age of thirteen years, and a male young person under the age of sixteen years, shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground for more than fifty-four hours in any one week, or more than ten hours in any one day, or otherwise than in accordance with the regulations hereinafter contained.

7. For the purpose of the provisions of this Act with respect to the employment of boys and male young persons in a mine below ground, the following regulations shall have effect ; that is to say,

(1.) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of employment :

(2.) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface :

(3.) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night.

8. The following regulations shall have effect with respect to boys of the age of ten and under the age of twelve years employed in any mine to which this Act applies below ground :

(1.) Every such boy shall attend school for at least twenty hours in every two weeks during which he is so employed :

(2.) In computing for the purpose of this Act the time during which

Vict. c. 16, "child" means a child under the age of fourteen, not, as here, thirteen ; "young person" a person of the age of fourteen years, and under the age of eighteen years, not, as here, of the age of thirteen years, and under the age of sixteen years ; and "woman" a female of eighteen years of age and upwards, and not, as here, a female of the age of sixteen years and upwards.

(*c*) See ss. 8, 9, 11, and 12.

a boy has attended school, there shall not be included any time during which such boy has attended either,

(*a.*) in excess of three hours at any one time, or in excess of five hours on any one day, or in excess of twelve hours in any one week ; or

(*b.*) on Sundays ; or

(*c.*) before eight o'clock in the morning or after six o'clock in the evening :

Provided that the non-attendance of any boy at school shall be excused—

(1.) For any time during which he is certified by the principal teacher of the school to have been prevented from attendance by sickness or other unavoidable cause :

(2.) For any time during which the school is closed for the customary holidays, or for some other temporary cause ; and

(3.) For any time during which there is no school which the boy can attend within two miles (measured according to the nearest road) from the residence of such boy or the mine in which he works.

The immediate employer (*d*) of a boy in every mine to which this Act applies, who has employed such boy for any time amounting in the whole to not less than fourteen days, shall on Monday in every week during the employment of such boy obtain from the principal teacher of some school a certificate that the boy so employed has in manner required by this Act attended school during the preceding week, if attendance at school was so required during that week.

The certificate may be in such form as a Secretary of State may from time to time prescribe.

The immediate employer, where he is not the owner, agent, or manager of the mine, shall deliver such certificate to the owner, agent, or manager of the mine, and the owner, agent, or manager shall obtain the delivery of such certificate, and shall keep any certificate obtained or delivered in pursuance of this section for six months in the office at the mine, and shall produce the same to any inspector under this Act at all reasonable times when required by him during that period, and allow him to inspect and copy the same.

Every person who forges or counterfeits any certificate required by this section, or gives or signs any such certificate falsely, or wilfully makes use of any forged, counterfeit, or false certificate, shall be liable on conviction to imprisonment for a period not exceeding three months, with or without hard labour.

9. The principal teacher of a school (*e*) which is attended by any boy employed in a mine to which this Act applies may apply in writing to

(*d*) Not defined ; but appears to refer to the getter of the minerals mentioned in s. 17.

(*e*) See s. 10.

the person who pays the wages of such boy to pay such sum as hereinafter mentioned on account of any boy in respect of whom he may have duly granted a certificate in pursuance of this Act, and after the date of such application, such person, so long as he employs the boy, shall pay to the principal teacher of the said school, for every week that the boy attends that school, the weekly sum specified in the application, not exceeding two pence per week, and not exceeding one-twelfth part of the wages of the boy, and may deduct the sum so paid by him from the wages payable for the services of such boy.

Any person who after such application refuses to pay on demand any sum that may become due as aforesaid shall be liable to a penalty not exceeding ten shillings.

10. If an inspector under this Act is satisfied by inspection of a school or otherwise that the principal teacher of a school who grants certificates of school attendance required under this Act ought to be disqualified for granting such certificates for any of the following reasons ; namely,

(1.) Because he is unfit to instruct children by reason either of his ignorance or neglect, or of his not having the necessary books and materials :

(2.) Because of his immoral conduct : or,

(3.) Because of his continued neglect to fill up proper certificates of school attendance :

in any such case he may serve on the teacher a written notice stating the reason for such disqualification. At the expiration of two weeks from the date of such notice the teacher shall, subject to the appeal hereinafter mentioned, be disqualified for granting certificates.

The inspector shall, so far as he can, serve on every employer of a child who obtains certificates from such teacher a notice to the like effect as the notice served on the teacher, and also specifying a school which the child employed by such employer can attend within two miles (measured according to the nearest road) from the place of employment or the residence of the child.

Any teacher who is disqualified as aforesaid, and any employer who obtains certificates from him, may, within three weeks after the service of the notice on the teacher, appeal therefrom to the Education Department, who may confirm or reverse such disqualification.

After a teacher is disqualified for granting certificates, no certificate given by him shall be deemed to be a certificate in compliance with this Act, unless in the case of there being no other school which the child employed in a mine can attend within two miles (measured according to the nearest road) from the mine or the residence of such child, or unless with the written consent of an inspector under this Act.

The inspectors under this Act shall in their reports to a Secretary of State report the name of every teacher disqualified under this section during the preceding twelve months, the name of the school at which

be taught, and such last-mentioned report shall be communicated to the Committee of Council on Education.

11. The following regulation shall apply to every boy of ten and under twelve years of age, employed below ground in any mine to which this Act applies :—

The parent, guardian, or person having the custody of or control over any such boy shall cause him to attend school in accordance with the regulations of this Act :

Every such parent, guardian, or person who wilfully fails to act in conformity with this section shall be liable to a penalty of not more than twenty shillings for each offence.

12. With respect to women, young persons, and children employed above ground, in connection with any mine to which this Act applies, the following provisions shall have effect :

(1.) No child under the age of ten years shall be so employed :

(2.) The regulations of this Act with respect to boys of ten and under twelve years of age shall apply to every child so employed :

(3.) The regulations of this Act with respect to male young persons under sixteen years of age shall apply to every woman and young person so employed :

(4.) No woman, young person, or child shall be so employed between the hours of nine at night and five on the following morning, or on Sunday, or after two o'clock on Saturday afternoon :

(5.) Intervals for meals shall be allowed to every woman, young person, and child so employed, amounting in the whole to not less than half an hour during each period of employment which exceeds five hours, and to not less than one hour and a half during each period of employment which exceeds eight hours.

The provisions of this clause as to the employment of women, young persons, and children after two o'clock on Saturday afternoon shall not apply in the case of any mine in Ireland, so long as it is exempted in writing by a Secretary of State.

13. The owner (*f*), agent, or manager of every mine to which this Act applies shall keep in the office at the mine a register, and shall cause to be entered in such register the name, age, residence, and date of first employment of all boys under the age of twelve years, and of the age of twelve and under the age of thirteen years, and of all male young persons under the age of sixteen years who are employed in the mine below ground, and of all women, young persons, and children employed above ground in connection with the mine, and a memorandum of the certificates of the school attendance of such boys obtained in pursuance of this Act, and shall produce such register to any

(*f*) "Owner" includes contractor, s. 72.

inspector under this Act at the mine at all reasonable times when required by him, and allow him to inspect and copy the same.

The immediate employer of every boy or male young person of the ages aforesaid, other than the owner, agent, or manager of the mine, before he causes such boy or male young person to be in any mine to which this Act applies below ground, shall report to the manager of such mine, or some person appointed by such manager, that he is about to employ him in such mine.

14. Where there is a shaft (*g*) or inclined plane or level in any mine to which this Act applies, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up or down or along such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal, or by manual labour, a person shall not be allowed to have charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith, unless he is a male of at least eighteen years of age.

Where the engine, windlass, or gin is worked by an animal, the person under whose direction the driver of the animal acts shall, for the purposes of this section, be deemed to be the person in charge of the engine, windlass, or gin, but such driver shall not be under twelve years of age.

15. If any person contravenes or fails to comply with, or permits (*h*) any person to contravene or fail to comply with, any provision of this Act with respect to the employment of women, girls, young persons, boys, or children, or to the attendance of boys at school, or to the register of boys and male young persons, or of women, young persons, and children, or to the reporting the intended employment of boys or male young persons, or to the employment of persons about any engine, windlass, or gin, he shall be guilty of an offence against this Act; and in case of any such contravention or non-compliance by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this Act to prevent such contravention or non-compliance.

If it appear that a child, boy, or young person, or a person employed about an engine, windlass, or gin, was employed on the representation of his parent or guardian that he was of that age at which his employment would not be in contravention of this Act, and under the belief in good faith that he was of that age, the owner, agent, or manager of the mine and employer shall be exempted from any penalty, and the parent or guardian shall, for such misrepresentation, be deemed guilty of an offence against this Act.

(*g*) See s. 72.

(*h*) In *Reg.* v. *Handley*, 9 L. T. N. S. 827, decided under 5 & 6 Vict. c. 99, it was held that to constitute the offence of "allowing" a breach of the Act, knowledge or acquiescence must be shown.

Wages.

16. No wages shall be paid to any person employed in or about any mine o which this Act applies at or within any public house, beer shop, or place for the sale of any spirits, beer, wine, cyder, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this section shall be guilty of an offence against this Act ; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

17. Where the amount of wages paid to any of the persons employed in a mine to which this Act applies depends on the amount of mineral gotten by them, such persons shall, after the first day of August, one thousand eight hundred and seventy-three, unless the mine is exempted by a Secretary of State, be paid according to the weight of the mineral gotten by them, and such mineral shall be truly weighed accordingly.

Provided always, that nothing herein contained shall preclude the owner, agent, or manager of the mine from agreeing with the persons employed in such mine that deductions shall be made in respect of stones or materials other than mineral contracted to be gotten, which shall be sent out of the mine with the mineral contracted to be gotten, or in respect of any tubs, baskets, or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer, or by the person immediately employed by him, such deductions being determined by the banksman or weigher and check weigher (if there be one), or in case of difference by a third party to be mutually agreed on by the owner, agent, or manager of the mine on the one hand, and the persons employed in the mine on the other.

Where it is proved to the satisfaction of a Secretary of State that by reason of any exigencies existing in the case of any mine or class of mines to which the foregoing provision in this section applies, it is requisite or expedient that the persons employed in such mine or class of mines should not be paid by the weight of the mineral gotten by them, or that the beginning of such payment by weight should be postponed, such Secretary of State may, if he think fit, by order exempt such mine or class of mines from the provisions of this section, either without condition or during the time and upon the conditions specified in the order, or postpone in such mine or class of mines the beginning of such

payment by weight, and may from time to time revoke or alter any such order (*i*).

If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section, he shall be guilty of an offence against this Act; and in the event of any contravention of or non-compliance with this section by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention and non-compliance.

18. The persons who are employed in a mine to which this Act applies, and are paid according to the weight of the mineral gotten by them, may, at their own cost, station a person (in this Act referred to as "a check weigher") (*j*) at the place appointed for the weighing of such mineral, in order to take an account of the weight thereof on behalf of the persons by whom he is so stationed. The check weigher shall be one of the persons employed either in the mine at which he is so stationed or in another mine belonging to the owner of that mine. He shall have every facility afforded to him to take a correct account of the weighing for the persons by whom he is so stationed; and if in any mine proper facilities are not afforded to the check weigher as required by this section, the owner, agent, and manager of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by enforcing to the best of his power the provisions of this section to prevent such contravention or non-compliance.

The check weigher shall not be authorised in any way to impede or interrupt the working of the mine, or to interfere with the weighing, but shall be authorised only to take such account as aforesaid, and the absence of the check weigher shall not be a reason for interrupting or delaying such weighing.

If the owner, agent, or manager of the mine desires the removal of a

(*i*) See Home Secretary's Circular, Nov. 28, 1872.

(*j*) *Prentice* v. *Hall* (1877), 37 L. T. 605; 26 W. R. 237. (Check weigher appointed by the other miners, under s. 18, had been convicted and imprisoned for intimidating one of the workmen, to prevent him working for Hall. Hall applied to justices for summary order for check weigher's removal: held that the check weigher had misconducted himself within the section, though it did not appear that the intimidation caused any impediment or interruption of the working of the mine.) *Whitehead* v. *Holdsworth* (1878), 4 Ex. D. 13; 48 L. J. Ex. 254; 39 L. T. 638; 27 W. R. 94. (Appellant, appointed by the miners check weigher. Subsequently, the respondents dismissed all the miners, and closed the mine. No notice was given to the appellant by or on behalf of the respondent or of the miners: held that the appellant had, on the dismissal of the miners, ceased to be checkweigher, and that an action for damages could not be maintained.)

check weigher on the ground that such check weigher has impeded or interrupted the working of the mine, or interfered with the weighing, or has otherwise misconducted himself, he may complain to any court of summary jurisdiction, who, if of opinion that the owner, agent, or manager shows sufficient *primâ facie* ground for the removal of such check weigher, shall call upon the check weigher to show cause against his removal. On the hearing of the case the court shall hear the parties, and if they think that at the hearing sufficient ground is shown by the owner, agent, or manager to justify the removal of the check weigher, shall make a summary order for his removal, and the check weigher shall thereupon be removed, but without prejudice to the stationing of another check weigher in his place.

The Court may in every case make such order as to the costs of the proceedings as they think just.

If in pursuance of any order of exemption made by a Secretary of State, the persons employed in a mine to which this Act applies are paid by the measure or gauge of the material gotten by them, the provisions of this section shall apply in like manner as if the term "weighing" included measuring and gauging, and the terms relating to weighing shall be construed accordingly.

19. The Weights and Measures Act, or any Act for the time being in force relating to weights and measures (*k*), shall apply to the weights used in any mine to which this Act applies for determining the wages payable to any person employed in such mine according to the weight of the mineral gotten by such person, in like manner as it applies to weights used for the sale of any article, and the inspector of weights and measures for the district appointed under the said Act shall accordingly from time to time, but without unnecessarily impeding or interrupting the working of the mine, inspect and examine, in manner directed by the said Act, the weighing machines and weights used for mines to which this Act applies, or the measures or gauges used for such mines: Provided that nothing in this section shall prevent the use of the measures and gauges ordinarily used in such mine.

The term "Weights and Measures Act" in this section means—

(*a.*) As to Great Britain the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter sixty-three, "to repeal an Act of the fourth and fifth year of His present Majesty relating to weights and measures, and to make other provisions instead thereof;" and,

(*b.*) As to Ireland, the Weights and Measures (Ireland) Amendment Act, 1862, as amended by the Act of the session of the thirtieth and thirty-first years of the reign of Her present Majesty, chapter ninety-four, "to provide for the inspection of weights and measures, and to regulate the law relating

(*k*) Weights and Measures Act, 41 & 42 Vict. c. 49.

thereto, in certain parts of the police district of Dublin Metropolis."

Single Shafts.

20. After the commencement of this Act the owner, agent, or manager of a mine to which this Act applies shall not employ any person in such mine, or permit any person to be in such mine for the purpose of employment therein, unless there are in communication with every seam of such mine for the time being at work at least two shafts (*l*) or outlets, separated by natural strata of not less than ten feet in breadth, by which shafts or outlets distinct means of ingress and egress are available to the persons employed in such seam, whether such two shafts or outlets belong to the same mine, or one or more of them belong to another mine, and unless there is a communication of not less than four feet wide and three feet high between such two shafts or outlets, and unless there is at each of such two shafts or outlets or upon the works belonging to the mine and either in actual use or available for use within a reasonable time proper apparatus for raising and lowering persons at each such shaft or outlet.

Provided that such separation shall not be deemed incomplete by reason only that openings through the strata between the two shafts or outlets have been made for temporary purposes of ventilation, drainage, or otherwise ; or in the case of mines where inflammable gas has not been found within the preceding twelve months for the same purposes although not temporary.

Every owner, agent, and manager of a mine who acts in contravention of or fails to comply with this section shall be guilty of an offence against this Act.

Any of Her Majesty's superior Courts of law or equity, whether any other proceedings have or have not been taken, may, upon the application of the Attorney-General, prohibit by injunction the working of any mine in which any person is employed, or is permitted to be for the purpose of employment, in contravention of this section, and may award such costs in the matter of the injunction as the Court thinks just; but this provision shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this Act.

Written notice of the intention to apply for such injunction in respect of any mine shall be given to the owner, agent, or manager of such mine not less than ten days before the application is made.

21. No person shall be precluded by any agreement from doing such acts as may be necessary for providing a second shaft or outlet to a mine, where the same is required by this Act, or be liable under any contract to any penalty or forfeiture for doing such acts as may be necessary

(*l*) See ss. 22 & 23.

in order to comply with the provisions of this Act with respect to shaft or outlets.

22. The provisions of this Act with respect to shafts or outlets shall not apply in the following cases ; that is to say,

(1.) In the case either of opening a new mine for the purpose of searching for or proving minerals, or of any working for the purpose of making a communication between two or more shafts, so long as not more than twenty persons are employed below ground at any one time in the whole of the different seams in connexion with each shaft or outlet in such new mine or such working :

(2.) In the case of any proved mine so long as it is exempted in writing by a Secretary of State on the ground either—

(*a.*) that the quantity of mineral proved is not sufficient to repay the outlay which would be occasioned by the sinking or making of a second shaft or outlet, or

(*b.*) if the mine is not a coal mine, or mine with inflammable gas, that sufficient provision has been made against danger from other causes than explosions of gas by using stone, brick, or iron in the place of wood for the lining of the shaft and the construction of the mid wall ; or

(*c.*) that the workings in any seam of a mine have reached the boundary of the property or other extremity of the mineral field of which such seam is a part, and that it is expedient to work away the pillars already formed in course of the ordinary working, notwithstanding that one of the shafts or outlets may be cut off by so working away the pillars of such seam ;

and so long as there are not employed below ground at any one time in the whole of the different seams in connexion with the shaft or outlet in any such mine, more than twenty persons, or (if the mine is not a coal mine, or mine with inflammable gas) than such larger number of persons as may for the time being be allowed by a Secretary of State :

(3.) In the case of any mine one of the shafts or outlets of which has become, by reason of some accident, unavailable for the use of the persons employed in the mine, so long as such mine is exempted in writing by a Secretary of State, and as the conditions on which such exemption is granted are duly observed.

23. The provisions of this Act with respect to shafts or outlets shall not, until the first day of January one thousand eight hundred and

seventy-five, apply to any mine which is not at the passing of this Act required to have two shafts or outlets.

24. If a written representation is made to a Secretary of State by the owner or agent of a mine not required at the passing of this Act to have two shafts or outlets, either—

(1.) Within six months after the commencement of this Act, alleging that by reason of the mine being nearly exhausted he ought to be exempted from the obligation of providing an additional shaft or outlet in pursuance of this Act ; or,

(2.) Within six months immediately preceding the first day of January one thousand eight hundred and seventy-five, alleging that an extension of time for providing an additional shaft or outlet ought to be granted to him :

the question as to whether such exemption or extension of time ought to be granted shall be referred to arbitration, and the date of the receipt of such representation by a Secretary of State shall be deemed to be the date of the reference, and the award made upon such arbitration may exempt the owner of such mine from the obligation of providing an additional shaft or outlet, and may grant to the owner of such other mine as aforesaid such extension of time as may be specified by the award, but if the result of the arbitration is against the owner or agent, or if no award is made by reason of any default or neglect on the part of the owner or agent, the owner or agent shall be bound by the provisions of this Act as if this section had not been enacted.

Division of Mine into Parts.

25. Where two or more parts of a mine are worked separately the owner or agent of such mine may give notice in writing to that effect to the inspector of the district, and thereupon each such part shall, for all the purposes of this Act, be deemed to be a separate mine.

If a Secretary of State is of opinion that the division of a mine in pursuance of this section tends to lead to the evasion of the provisions of this Act, or otherwise to prevent the carrying of this Act into effect, he may object to such division by notice served on the owner or agent of the mine ; and such owner or agent, if he decline to acquiesce in such objection, may, within twenty days after the receipt of such notice, send a notice to the inspector of the district stating that he declines so to acquiesce, and thereupon the matter shall be determined by arbitration in manner provided by this Act ; and the date of the receipt of the last-mentioned notice shall be deemed to be the date of the reference.

Certificated Managers.

26. Every mine to which this Act applies shall be under the control

and daily supervision of a manager (*m*), and the owner or agent of every such mine shall nominate himself or some other person (not being a contractor for getting the mineral in such mine, or a person in the employ of such contractor) to be the manager of such mine, and shall send written notice to the inspector of the district of the name and address of such manager.

A person shall not be qualified to be a manager of a mine to which this Act applies unless he is for the time being registered as the holder of a certificate under this Act.

If any mine to which this Act applies is worked for more than fourteen days without there being such a manager for that mine as is required by this section, the owner and agent of such mine shall each be liable to a penalty not exceeding fifty pounds, and to a further penalty not exceeding ten pounds for every day during which such mine is so worked.

Provided that—

(*a.*) The owner of such mine shall not be liable to any such penalty if he prove that he had taken all reasonable means by the enforcement of this section to prevent the mine being worked in contravention of this section :

(*b.*) If for any reasonable cause there is for the time being no manager of a mine qualified as required by this section, the owner or agent of such mine may appoint any competent person not holding a certificate under this Act to be manager, for a period not exceeding two months, or such longer period as may elapse before such person has an opportunity of obtaining by examination a certificate under this Act, and shall send to the inspector of the district a written notice of the name and address of such manager, and of the reason of his appointment ; and

(*c.*) A mine in which less than thirty persons are ordinarily employed below ground, or of which the average daily output does not exceed twenty-five tons, shall be exempt from the provisions of this section, unless the inspector of the district, by notice in writing served on the owner or agent of such mine, requires the same to be under the control of a manager.

27. For the purpose of granting in any part of the United Kingdom, to be from time to time defined by an order in writing made by a Secretary of State, certificates of competency to managers of mines for the purposes of this Act, examiners shall be appointed by a board constituted as hereinafter mentioned (*n*).

A Secretary of State may from time to time appoint, remove, and

(*m*) See *Howells* v. *Landore Steel Co.* (1874), L. R. 10 Q. B. 62 ; 44 L. J. Q. B. 25 ; 32 L. T. 19 ; 23 W. R. 335.

(*n*) See Home Secretary's Circular of 28th Nov., 1872.

re-appoint fit persons to form such board as follows ; namely, three persons being owners of mines to which this Act applies in the said part of the United Kingdom, and three persons employed in or about a mine to which this Act applies in the said part of the United Kingdom, not being owners, agents, or managers of a mine, and three persons practising as mining engineers, agents, or managers of mines, or coal viewers in the said part of the United Kingdom, and one inspector under this Act ; the persons so appointed shall during the pleasure of the Secretary of State form the board for the purposes of the said examination in the said part of the United Kingdom.

28. The proceedings of the board shall be in accordance with the rules contained in schedule two to this Act ; the board shall from time to time appoint examiners, not being members of the board, except with the consent of the Secretary of State, to conduct the examinations in the part of the United Kingdom for which such board acts, of applicants for certificates of competency under this Act, and may from time to time make, alter, and revoke rules as to the conduct of such examinations and the qualifications of the applicants, so, however, that in every such examination regard shall be had to such knowledge as is necessary for the practical working of mines in the said part of the United Kingdom ; every such board shall make from time to time to a Secretary of State a report and return of their proceeding, and of such other matters as a Secretary of State may from time to time require.

29. A Secretary of State may from time to time make, alter, and revoke rules as to the places and times of examinations of applicants for certificates of competency under this Act, the number and remuneration of the examiners, and the fees to be paid by the applicants, so that the fees do not exceed those specified in schedule one to this Act. Every such rule shall be duly observed by every board appointed under this Act to whom it applies.

30. A Secretary of State shall deliver to every applicant who is duly reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct, such a certificate of competency as the case requires. The certificate shall be in such form as a Secretary of State from time to time directs, and a register of the holders of such certificates shall be kept by such person and in such manner as a Secretary of State from time to time directs.

31. Certificates of service for the purposes of this Act shall be granted by a Secretary of State to every person who satisfies him either that before the passing of this Act he was acting, and has since that day acted, or that he has at any time within five years before the passing of this Act for a period of not less than twelve months acted, in the capacity of a manager of a mine or such part of a mine as can under this Act be made a separate mine for the purposes of this Act.

Every such certificate of service shall contain particulars of the name

place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered, and a certificate of service may be refused to any person who fails to give a full and satisfactory account of the particulars aforesaid, or to pay such registration fee as the Secretary of State may direct, not exceeding that mentioned in schedule one to this Act.

A certificate of service shall have the same effect for the purposes of this Act as a certificate of competency granted under this Act.

32. If at any time representation is made to a Secretary of State by an inspector or otherwise, that any manager holding a certificate under this Act is by reason of incompetency or gross negligence unfit to discharge his duties, or has been convicted of an offence against this Act, the Secretary of State may, if he think fit, cause inquiry to be made into the conduct of such manager, and with respect to such inquiry the following provisions shall have effect :

(1.) The inquiry shall be public, and shall be held at such place as the Secretary of State may appoint by such county court judge, metropolitan police magistrate, stipendiary magistrate, or other person or persons, as may be directed by the Secretary of State, and either alone or with the assistance of any assessor or assessors named by the Secretary of State :

(2.) The Secretary of State shall, before the commencement of the inquiry, furnish to the manager a statement of the case upon which the inquiry is instituted :

(3.) Some person appointed by the Secretary of State shall undertake the management of the case :

(4.) The manager may attend the inquiry by himself, his counsel, attorney, or agent, and may, if he think fit, be sworn and examined as an ordinary witness in the case :

(5.) The persons appointed to hold the inquiry, in this Act referred to as the Court, shall, upon the conclusion of the inquiry, send to the Secretary of State a report containing a full statement of the case, and their opinion thereon, and such report of, or extracts from the evidence, as the Court think fit :

(6.) The Court shall have power to cancel or suspend the certificate of the manager, if they find that he is by reason of incompetency or gross negligence, or of his having been convicted of an offence against this Act, unfit to discharge his duty :

(7.) The Court may, if they think fit, require a manager to deliver up his certificate, and if any manager fail, without sufficient cause to the satisfaction of the Court, to comply with such requisition, he shall be liable to a penalty not exceeding one hundred pounds. The Court shall hold a certificate so delivered until the conclusion of the investigation, and shall

then either restore, cancel, or suspend the same, according to their judgment on the case :

(8.) The Court shall have for the purpose of the inquiry, all the powers of a court of summary jurisdiction, and all the powers of an inspector under this Act :

(9.) The Court may also, by summons under their hands, require the attendance of all such persons as they think fit to call before them and examine for the purpose of the inquiry, and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on subpœna before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to a master of one of the superior courts, who, on request under the hands of the members of the Court, shall ascertain and certify the proper amount of such expenses.

33. The Court may make such order as they think fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit of the same, be enforced by any court of summary jurisdiction as if such costs and expenses were a penalty imposed by such Court.

The Secretary of State may, if he think fit, pay to the members of the Court of inquiry, including any assessors, such remuneration as he may with the consent of the Treasury appoint.

Any costs and expenses ordered by the Court to be paid by a Secretary of State, and any remuneration paid under this section, shall be paid out of moneys provided by Parliament.

34. Where a certificate of a manager is cancelled or suspended in pursuance of this Act, a Secretary of State shall cause such cancellation or suspension to be recorded in the register of holders of certificates.

A Secretary of State may at any time, if it is shown to him to be just so to do, renew or restore, on such terms as he think fit, any certificate which has been cancelled or suspended in pursuance of this Act.

35. Whenever any person proves to the satisfaction of a Secretary of State that he has, without fault on his part, lost, or been deprived of any certificate previously granted to him under this Act, such Secretary of State shall, upon payment of such fee, if any, as he may direct, but not exceeding the fee specified in Schedule One to this Act, cause a copy of the certificate to which the applicant appears by the register to be entitled, to be made out and certified by the person who keeps the register, and delivered to the applicant, and any copy which purports to be so made and certified as aforesaid shall have all the effect of the original certificate.

36. All expenses incurred by a Secretary of State with the concurrence of the Commissioners of Her Majesty's Treasury in carrying into effect the provisions of this Act with respect to certificates of competency or service shall be defrayed out of moneys provided by Parliament.

All fees payable by the applicants for examination for or for a copy of a certificate under this Act shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct, and be carried to the Consolidated Fund.

37. Every person who commits any of the following offences ; that is to say,—

(1.) Forges, or counterfeits, or knowingly makes any false statement in any certificate of competency or service under this Act, or any official copy of such certificate ; or

(2.) Knowingly utters or uses any such certificate or copy which has been forged or counterfeited or contains any false statement ; or

(3.) For the purpose of obtaining, for himself or any other person, employment as a certificated manager, or the grant, renewal, or restoration of any certificate under this Act, or a copy thereof, either

(*a.*) makes or gives any declaration, representation, statement, or evidence which is false in any particular, or

(*b.*) knowingly utters, produces, or makes use of any such declaration, representation, statement, or evidence, or any document containing the same,

shall be guilty of a misdemeanour, and be liable on conviction to imprisonment for a term not exceeding two years, with or without hard labour.

Returns, Notices, and Abandonment.

38. On or before the first day of February in every year the owner, agent, or manager of every mine to which this Act applies shall send to the inspector of the district on behalf of a Secretary of State a correct return, specifying, with respect to the year ending on the preceding thirty-first day of December, the quantity of coal or other mineral wrought in such mine, and the number of persons ordinarily employed in or about such mine below ground and above ground, distinguishing the persons employed below ground and above ground, and the different classes and ages of the persons so employed whose hours of labour are regulated by this Act.

The return shall be in such form as may be from time to time prescribed by a Secretary of State, and the inspector of the district on behalf of a Secretary of State shall from time to time on application furnish forms for the purpose of such return.

The Secretary of State may publish the aggregate results of such returns with respect to any particular county or inspector's district, or any large portion of a county or inspector's district, but the individual return shall not be published without the consent of the person making the same, or of the owner of the mine to which they relate, and no person

except an inspector or Secretary of State shall be entitled, without such consent, to see the same.

Every owner, agent, or manager of a mine who fails to comply with this section or makes any return which is to his knowledge false in any particular shall be guilty of an offence against this Act.

39. Where in or about any mine to which this Act applies, whether above or below ground, either

(1.) loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder, or of any steam boiler; or

(2.) loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever,

the owner, agent, or manager of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident, and of the loss of life or personal injury (*o*) occasioned thereby to the inspector of the district on behalf of a Secretary of State, and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively.

Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager.

Every owner, agent, or manager who fails to act in compliance with this section shall be guilty of an offence against this Act.

40. In any of the following cases, namely,

(1.) Where any working is commenced for the purpose of opening a new shaft for any mine to which this Act applies;

(2.) Where a shaft of any mine to which this Act applies is abandoned or the working thereof discontinued;

(3.) Where the working of a shaft of any mine to which this Act applies is recommenced after any abandonment or discontinuance for a period exceeding two months: or

(4.) Where any change occurs in the name of, or in the name of the owner, agent, or manager of, any mine to which this Act applies, or in the officers of any incorporated company which is the owner of a mine to which this Act applies,

the owner, agent, or manager of such mine shall give notice thereof to the inspector of the district within two months after such commencement, abandonment, discontinuance, recommencement, or change, and if such notice is not given the owner, agent, or manager shall be guilty of an offence against this Act.

(*o*) See *Underhill* v. *Longridge* (1869), 29 L. J. M. C. 65.

41. Where any mine to which this Act applies is abandoned (*p*), or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of such mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents :

Provided that—

(1.) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect :

(2.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section, he shall be guilty of an offence against this Act.

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or uninclosed land, shall be deemed to be a nuisance within the meaning of section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866 (*q*).

42. Where any mine to which this Act applies is abandoned, the owner of such mine at the time of such abandonment shall, within three months after such abandonment, send to a Secretary of State an accurate plan on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan used in the mine at the time of such abandonment is constructed on, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Secretary of State, but no person, except an inspector under this Act, shall be entitled, without the consent of the owner of the mine, to see such plan when so sent until after the lapse of ten years from the time of such abandonment.

Every person who fails to comply with this section shall be guilty of an offence against this Act.

Inspection.

43. A Secretary of State may from time to time appoint any fit persons to be inspectors of mines to which this Act applies, and assign them their duties, and may award them such salaries as the Com-

(*p*) *Stott* v. *Dickinson* (1876), 34 L. T. 291. "Abandoned" applies to mines abandoned before or after the Act came into force. See also *Evans* v. *Mostyn* (1877), L. R. 2 C. P. D. 547 ; 47 L. J. M. C. 25.

(*q*) Both Acts repealed by Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 343 and schedule V.), except in relation to the metropolis.

missioners of Her Majesty's Treasury may approve, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the *London Gazette*.

Any such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of the United Kingdom with reference to which the term is used.

Any person appointed or acting as inspector under the Metalliferous Mines Regulation Act, 1872, if directed by a Secretary of State to act as an inspector under this Act, may so act, and shall be deemed to be an inspector under this Act.

44. Any person who practises or acts or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager, viewer, agent, or valuer of mines, or arbitrator in any difference arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine (whether such mine is one to which this Act applies or not), shall not act as an inspector of mines under this Act.

45. An inspector under this Act shall have power to do all or any of the following things; namely,

(1.) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine to which this Act applies:

(2.) To enter, inspect, and examine any mine to which this Act applies, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine:

(3.) To examine into and make inquiry respecting the state and condition of any mine to which this Act applies, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto:

(4.) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner, agent, and manager of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination, or inquiry under this Act, in relation to such mine, shall be guilty of an offence against this Act.

46. If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector find any mine to which this Act applies, or any part thereof, or any matter,

thing, or practice in or connected with any such mine to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, such inspector may give notice in writing thereof to the owner, agent, or manager of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter (*r*), thing, or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied the inspector shall also report the same to a Secretary of State.

If the owner, agent, or manager of the mine objects to remedy the matter complained of in the notice he may, within twenty days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to a Secretary of State; and thereupon the matter shall be determined by arbitration in manner provided by this Act; and the date of the receipt of such objection shall be deemed to be the date of the reference.

If the owner, agent, or manager fail to comply either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection or the time of making of the award (as the case may be), he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of such offence.

Provided that the Court, if satisfied that the owner, agent, or manager has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such offence and, if the works are completed within a reasonable time, no penalty shall be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.

47. The owner, agent, or manager of every mine to which this Act

(*r*) *Queen* v. *Spon Lane Colliery Co.* (1878), L. R. 3 Q. B. D. 673; 48 L. J. M. C. 25. (Appellants, owners of a colliery. Notice was given to them by the district inspector that an accumulation of water which was dangerous existed near to and in connection with their mining works, and requiring them under this section forthwith to remedy the matter. The accumulation of water was in the pit shaft of an adjoining colliery, and the defendants had no power to interfere with the water in it. They took all practicable measures to reduce the accumulation of water, but, after the notice, they did not remove the men at work in their own colliery: held by Cockburn, C.J., and Mellor, J. that the inspector could, under s. 46, only give notice when the danger could be actually remedied by the occupier of the mine; that the section did not extend to a case in which the source of danger was beyond his control; and that the only remedy in the circumstances was provided by s. 51, sub-sec. 6.

applies shall keep in the office at the mine an accurate plan of the workings of such mine, and showing the workings up to at least six months previously.

The owner, agent, or manager of the mine shall produce to an inspector under this Act at the mine, such plan, and shall, if requested by the inspector, mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same; but the inspector is not hereby authorized to make a copy of any part of such plan.

If the owner, agent, or manager of any mine to which this Act applies fails to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and, further, the inspector may, by notice in writing, (whether a penalty for such offence has or has not been inflicted,) require the owner, agent, or manager to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time, at the expense of the owner of the mine, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan then used in the mine is constructed on.

If the owner, agent, or manager fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector to make or cause to be made such plan, he shall be guilty of an offence against this Act (*s*).

48. Every inspector under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament.

A Secretary of State may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient.

Arbitration.

49. With respect to arbitrations under this Act, the following provisions shall have effect:

(1.) The parties to the arbitration are in this section deemed to be the owner, agent, or manager of the mine on the one hand, and the inspector of mines (on behalf of the Secretary of State) on the other:

(2.) Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator:

(*s*) Note the difference from s. 19 of Metalliferous Mines Regulation Act.

(3.) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of or is interested in the mine to which the arbitration relates :

(4.) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party :

(5.) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section :

(6.) If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final :

(7.) If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator shall be final :

(8.) In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made :

(9.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned :

(10.) The arbitrators, before they enter upon the matters referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ :

(11.) If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place :

(12.) If the arbitrators refuse or fail or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire shall be appointed

by the chairman of the general or quarter sessions of the peace, within the jurisdiction of which the mine is situate :

(13.) The decision of every umpire on the matters referred to him shall be final :

(14.) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :

(15.) The arbitrators and their umpire or any of them may examine the parties and their witnesses on oath, they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult :

(16.) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties or one of them according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who, on the written application of either of the parties, shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner, agent, or manager may in the event of non-payment be recovered in the same manner as penalties under this Act :

(17.) Every person who is appointed an arbitrator or umpire under this section shall be a practical mining engineer, or a person accustomed to the working of mines, but when an award has been made under this section the arbitrator or umpire who made the same shall be deemed to have been duly qualified as provided by this section.

Coroners.

50. With respect to coroners' inquests on the bodies of persons whose death may have been caused by explosions or accidents in mines to which this Act applies, the following provisions shall have effect :

(1.) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn such inquest unless an inspector, or some person on behalf of a Secretary of State, is present to watch the proceedings :

(2.) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector for the district notice in writing of the time and place of holding the adjourned inquest :

(3.) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof :

(4.) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn :

(5.) An inspector shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner :

(6.) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or default :

(7.) Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred shall not be qualified to serve on the jury empanelled on the inquest ; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART II.

Rules.

General Rules.

51. The following general rules shall be observed, so far as is reasonably practicable, in every mine to which this Act applies :

(1.) An adequate amount of ventilation shall be constantly produced in every mine, to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables, and workings of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein (*t*).

(*t*) The repealed Act, 23 & 24 Vict. c. 151, s. 10, had the words "under ordinary circumstances" In *Brough* v. *Homfray* (1868), L. R. 3 Q. B. 771,

(2.) In every mine in which inflammable gas has been found within the preceding twelve months, then once in every twenty-four hours if one shift of workmen is employed, and once in every twelve hours if two shifts are employed during any twenty-four hours, a competent person or competent persons, who shall be appointed for the purpose, shall, before the time for commencing work in any part of the mine, inspect with a safety lamp that part of the mine, and the roadways leading thereto, and shall make a true report of the condition thereof, so far as ventilation is concerned, and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe. Every such report shall be recorded without delay in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.

(3.) In every mine in which inflammable gas has not been found within the preceding twelve months, then once in every twenty-four hours a competent person or competent persons, who shall be appointed for the purpose, shall, so far as is reasonably practicable immediately before time for commencing work in any part of the mine, inspect that part of the mine and the roadways leading thereto, and shall make a true report of the condition thereof so far as ventilation is concerned, and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe. Every report shall be recorded without delay in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.

(4.) All entrances to any place not in actual course of working and extension, shall be properly fenced (*u*) across the whole width of such entrance, so as to prevent persons inadvertently entering the same.

(5.) A station or stations shall be appointed at the entrance to the mine, or to different parts of the mine, as the case may require, and a workman shall not pass beyond any such station until the mine or part of the mine beyond the same has been inspected and stated to be safe.

the Court of Queen's Bench held, with reference to the corresponding words in that Act, that it was not a compliance with the statute to ventilate the working-places and travelling-roads; "so much of the mine must be kept so ventilated as to render the working-places and travelling-roads safe." In *Hall* v. *Hopwood* (1879), 49 L. J. M. C. 17; 41 L. T. 797, respondent, a certificated manager of a coal mine, at a salary of £1 a week, was charged with an offence under this section; the mine being improperly ventilated. The respondent might have improved the ventilation with the means at his disposal, but the proper ventilation would have required an outlay of £200: held that the defendant was liable to be convicted. But the Court observed that the statute does not require the manager to "spend his own money in providing the requisite machinery to secure proper ventilation." See also *Knowles* v. *Dickinson* (1860), 29 L. J. M. C. 135, where it was held that the ventilation must be constantly kept up, Sundays included.

(*u*) *Simpson* v. *Moore* (1874), 3 Couper 26. A fence, consisting of a heap of stones, two to two and a half feet high, and sloping from five feet at the base to eighteen inches at the top, not a sufficient fence within the Act.

(6.) If at any time it is found by the person for the time being in charge of the mine or any part thereof that by reason of noxious gases prevailing in such mine or such part thereof, or, of any cause whatever, the mine or the said part is dangerous, every workman shall be withdrawn from the mine or such part thereof as is so found dangerous, and a competent person who shall be appointed for the purpose shall inspect the mine or such part thereof as is so found dangerous, and if the danger arises from inflammable gas shall inspect the same with a locked safety lamp, and in every case shall make a true report of the condition of such mine or part thereof, and a workman shall not, except in so far as is necessary for inquiring into the cause of danger or for the removal thereof, or for exploration, be readmitted into the mine, or such part thereof as was so found dangerous, until the same is stated by such report not to be dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.

(7.) In every working approaching any place where there is likely to be an accumulation of explosive gas, no lamp or light other than a locked safety lamp shall be allowed or used, and whenever safety lamps are required by this Act, or by the special rules made in pursuance of this Act, to be used, a competent person who shall be appointed for the purpose shall examine every safety lamp immediately before it is taken into the workings for use, and ascertain it to be secure and securely locked, and in any part of a mine in which safety lamps are so required to be used, they shall not be used until they have been so examined and found secure and securely locked, and shall not without due authority be unlocked, and in the said part of a mine a person shall not, unless he is appointed for the purpose, have in his possession any key or contrivance for opening the lock of any such safety lamp, or any lucifer match or apparatus of any kind for striking a light.

(8.) Gunpowder or other explosive or inflammable substance shall only be used in the mine underground as follows :

(*a.*) It shall not be stored in the mine :

(*b.*) It shall not be taken into the mine, except in a case or canister containing not more than four pounds :

(*c.*) A workman shall not have in use at one time in any one place more than one of such cases or canisters :

(*d.*) In charging holes for blasting, an iron or steel pricker shall not be used, and a person shall not have in his possession in the mine underground any iron or steel pricker, and an iron or steel tamping rod or stemmer shall not be used for ramming either the wadding or the first part of the tamping or stemming on the powder :

(*e.*) A charge of powder which has missed fire shall not be unrammed :

(*f*) It shall not be taken into or be in the possession of any person in

any mine, except in cartridges, and shall not be used, except in accordance with the following regulations, during three months after any inflammable gas has been found in any such mine; namely,

(1.) A competent person who shall be appointed for the purpose shall, immediately before firing the shot, examine the place where it is to be used, and the places contiguous thereto, and shall not allow the shot to be fired unless he finds it safe to do so, and a shot shall not be fired except by or under the direction of a competent person who shall be appointed for the purpose:

(2.) If the said inflammable gas issued so freely that it showed a blue cap on the flame of the safety lamp, it shall only be used—

(*a.*) Either in those cases of stone drifts, stone work and sinking of shafts, in which the ventilation is so managed that the return air from the place where the powder is used passes into the main return air course without passing any place in actual course of working; or

(*b.*) When the persons ordinarily employed in the mine are out of the mine or out of the part of the mine where it is used:

(*g.*) Where a mine is divided into separate panels in such manner that each panel has an independent intake and return air-way from the main air course and the main return air course, the provisions of this rule with respect to gunpowder or other explosive inflammable substance shall apply to each such panel in like manner as if it were a separate mine.

(9.) Where a place is likely to contain a dangerous accumulation of water the working approaching such place shall not exceed eight feet in width, and there shall be constantly kept at a sufficient distance, not being less than five yards, in advance, at least one bore-hole near the centre of the working, and sufficient flank bore-holes on each side.

(10.) Every underground plane on which persons travel, which is self-acting or worked by an engine, windlass, or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than twenty yards, with sufficient man-holes for places of refuge.

(11.) Every road on which persons travel underground where the load is drawn by a horse or other animal shall be provided, at intervals of not more than fifty yards, with sufficient man-holes, or with a space for a place of refuge, which space shall be of sufficient length, and of at least

three feet in width between the waggons running on the tramroad and the side of such road.

(12.) Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or such space so as to prevent access thereto.

(13.) The top of every shaft which for the time being is out of use, or used only as an air shaft, shall be securely fenced.

(14.) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used.

(15.) Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined, or otherwise made secure.

(16.) The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel or work in any such travelling road or working place which is not so made secure.

(17.) Where there is a downcast and furnace shaft, and both such shafts are provided with apparatus in use for raising and lowering persons, every person employed in the mine shall, upon giving reasonable notice, have the option of using the downcast shaft.

(18.) In any mine which is usually entered by means of machinery, a competent person of such age as prescribed by this Act shall be appointed for the purpose of working the machinery which is employed in lowering and raising persons therein, and shall attend for the said purpose during the whole time that any person is below ground in the mine.

(19.) Every working shaft used for the purpose of drawing minerals or for the lowering or raising of persons shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every entrance for the time being in work between the surface and the bottom of the shaft.

(20.) A sufficient cover overhead shall be used when lowering or raising persons in every working shaft, except where it is worked by a windlass, or where the person is employed about the pump or some work of repair in the shaft, or where a written exemption is given by the inspector of the district.

(21.) A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or load.

(22.) There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also if the drum is conical,

such other appliances, as may be sufficient to prevent the rope from slipping (*v*).

(23.) There shall be attached to every machine worked by steam, water, or mechanical power and used for lowering or raising persons, an adequate break (*x*), and also a proper indicator (in addition to any mark on the rope) which shows to the person who works the machine the position of the cage or load in the shaft.

(24.) Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

(25.) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

(26.) After dangerous gas has been found in any mine, a barometer and thermometer shall be placed above ground in a conspicuous position near the entrance to the mine.

(27.) No person shall wilfully damage, or without proper authority remove or render useless any fence, fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

(28.) Every person shall observe such directions with respect to working as may be given to him with a view to comply with this Act or the special rules.

(29.) A competent person or competent persons who shall be appointed for the purpose shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery, and the state of the head gear, working places, levels, planes, ropes, chains, and other works of the mine which are in actual use, and once at least in every week shall examine the state of the shafts by which persons ascend or descend, and the guides or conductors therein, and shall make a true report of the result of such examination, and such report shall be recorded in a book

(*v*) An information was preferred under this sub-section against the part owner of a coal mine, in which one of the general rules regulating the employment of machines had not been complied with. The general rules were put up in various parts of the mine, and the defendants occasionally visited the mine, but resided at a distance, and took no part in the management of the mine, which was under the exclusive control of the certificated manager, who was also part owner. The defendant was not examined as a witness, but it was admitted that he had not personally taken any means to enforce the rules. The justices found, as a fact, that the defendant had taken all reasonable means by publishing, and, to the best of his power, enforcing, the rules as regulations for the working of the mine, to prevent such non-compliance, and dismissed the information: held that there was evidence from which the justices might properly come to that conclusion. *Baker* v. *Carter* (1878), L. R. 3 Ex. D. 132; 47 L. J. M. C. 87; 26 W. R. 444.

(*x*) *Nimmo* v. *Clark* (1872), 10 M. 477. (Pumping gear, though serving the purpose of a break, not a break within the Act (23 & 24 Vict. c. 151).)

to be kept at the mine for the purpose, and shall be signed by the person who made the same (*y*).

(30.) The persons employed in a mine may from time to time appoint two of their number to inspect the mine at their own cost, and the persons so appointed shall be allowed, once at least in every month, accompanied, if the owner, agent, or manager of the mine thinks fit, by himself or one or more officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings, and machinery, and shall be afforded by the owner, agent, and manager, and all persons in the mine, every facility for the purpose of such inspection, and shall make a true report of the result of such inspection, and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the same.

(31.) The books mentioned in this section, or a copy thereof, shall be kept at the office at the mine, and any inspector under this Act, and any person employed in the mine, may, at all reasonable times, inspect and take copies of and extracts from any such books.

Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Act; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any person whomsoever, being proved, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance.

Special Rules.

52. There shall be established in every mine to which this Act applies such rules (referred to in this Act as special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the same as, under the particular state and circumstances of such mine, may appear best calculated to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules, when established, shall be signed by the inspector who is inspector of the district at the time such rules are established, and shall be observed

(*y*) Under the 23rd section of the repealed 23 & 24 Vict. c. 151, it was held that an owner of a mine was not liable to a penalty in the absence of personal default when he had appointed a competent person to examine and lock the safety lamps, and the lampman had delivered out certain safety-lamps unlocked. *Dickinson* v. *Fletcher* (1870), L. R. 9 C. P. 1; 43 L. J. M. C. 25; 29 L. T. 540. See also *Howells* v. *Landore Steel Co.*, L. R. 10 Q. B. 62; 44 L. J. Q. B. 25; 32 L. T. 19; 23 W. R. 335.

in and about every such mine, in the same manner as if they were enacted in this Act.

If any person (z) who is bound to observe the special rules established for any mine, acts in contravention of or fails to comply with any of such special rules, he shall be guilty of an offence against this Act, and also the owner, agent, and manager of such mine, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine so as to prevent such contravention or non-compliance, shall each be guilty of an offence against this Act.

53. The owner, agent, or manager of every mine to which this Act applies shall frame and transmit to the inspector of the district, for approval by a Secretary of State, special rules for such mine within three months after the commencement of this Act, or within three months after the commencement (if subsequent to the commencement of this Act) of any working for the purpose of opening a new mine or of renewing the working of an old mine.

The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom may be sent by any of the persons employed in the mine to the inspector of the district, at his address, stated in such notice, shall, during not less than two weeks before such rules are transmitted to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notice have been so posted up shall be sent to the inspector with the rules, signed by the person sending the same.

If the rules are not objected to by the Secretary of State within forty days after their receipt by the inspector, they shall be established.

54. If the Secretary of State is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety of the

(z) By a special rule made under this section, no person "employed in or about the works" "shall go down or up, or into the pit, contrary to the directions of the banksman or the hooker-on." The workmen had power to terminate their contracts at a moment's notice. Being dissatisfied with their working-places, certain workmen in the pit gave notice of their intention to leave at once. They asked the hooker-on to allow them to ascend, but he refused to do so until the usual time for workmen to quit the mine. The workmen ascended, contrary to his directions. They were held guilty of a breach of the special rule. *Higham* v. *Wright* (1877), L. R. 2 C. P. D. 397; 46 L. J. M. C. 223; 37 L. T. 187.

The agent of a mine may be convicted under this section of a breach of regulations prescribed by sections 51 and 52, although the mine is under the control of a duly certificated manager. Owner, agent, and manager, are all liable, "unless they have taken all reasonable means to prevent a contravention of the rules;" *Wynne* v. *Forrester* (1879), L. R. 5 C. P. D. 361; 48 L. J. M. C. 140; 40 L. T. 524.

persons employed in or about the mine, or are unreasonable, he may, within forty days after the rules are received by the inspector, object to the rules, and propose to the owner, agent, or manager in writing any modifications in the rules by way either of omission, alteration, substitution, or addition.

If the owner, agent, or manager does not, within twenty days after the modifications proposed by the Secretary of State are received by him, object in writing to them, the proposed special rules, with such modifications, shall be established.

If the owner, agent, or manager sends his objection in writing within the said twenty days to the Secretary of State, the matter shall be referred to arbitration, and the date of the receipt of such objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration.

55. After special rules are established under this Act in any mine, the owner, agent, or manager of such mine may from time to time propose in writing to the inspector of the district, for the approval of a Secretary of State, any amendment of such rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as near as may be, as they apply to the original rules.

A Secretary of State may from time to time propose in writing to the owner, agent, or manager of the mine any new special rules, or any amendment to the special rules, and the provisions of this Act with respect to a proposal of a Secretary of State for modifying the special rules transmitted by the owner, agent, or manager of a mine shall apply to all such new special rules and amendments in like manner, as near as may be, as they apply to such proposal.

56. If the owner, agent, or manager of any mine to which this Act applies makes any false statement with respect to the posting up of the rules and notices, he shall be guilty of an offence against this Act, and if special rules for any mine are not transmitted within the time limited by this Act to the inspector for the approval of a Secretary of State, the owner, agent, and manager of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means, by enforcing to the best of his power the provisions of this section, to secure the transmission of such rules.

57. For the purpose of making known the special rules and the provisions of this Act to all persons employed in and about each mine to which this Act applies, an abstract of the Act supplied, on the application of the owner, agent, or manager of the mine, by the inspector of the district on behalf of a Secretary of State, and an entire copy of the special rules shall be published as follows :

(1.) The owner, agent, or manager of such mine shall cause such abstract and rules, with the name and address of the inspector of the district, and the name of the owner or

agent and of the manager appended thereto, to be posted up in legible characters, in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed; and so often as the same become defaced, obliterated, or destroyed, shall cause them to be renewed with all reasonable despatch:

(2.) The owner, agent, or manager shall supply a printed copy of the abstract and the special rules gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner, agent, or manager are paid:

(3.) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

In the event of any non-compliance with the provisions of this section by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act; but the owner, agent, or manager of such mine shall not be deemed guilty if he prove that he had taken all reasonable means, by enforcing to the best of his power the observance of this section, to prevent such non-compliance.

58. Every person who pulls down, injures, or defaces any proposed special rules, notice, abstract, or special rules when posted up in pursuance of the provisions of this Act with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

59. An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules, which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act and have been signed by the inspector.

PART III.

Supplemental.

Penalties.

60. Every person employed in or about a mine, other than an owner, agent, or manager, who is guilty of any act or omission which in the case of an owner, agent, or manager would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.

Every person who is guilty of an offence against this Act shall be

liable to a penalty not exceeding, if he is an owner, agent, or manager, twenty pounds, and if he is any other person, two pounds, for each offence; and if the inspector has given written notice of any such offence, to a further penalty not exceeding one pound for every day after such notice that such offence continues to be committed (*a*).

61. Where a person who is an owner, agent, or manager of or a person employed in or about a mine is guilty of any offence against this Act which, in the opinion of the court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months.

If any person feel aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, by which conviction imprisonment is adjudged in pursuance of this section, or by which conviction the sum adjudged to be paid amounts to or exceeds half the maximum penalty, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1). The appeal shall be made to the next court of general or quarter sessions for the county, division, or place in which the cause of appeal has arisen, holden not less than twenty-one days after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

(3.) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow:

(4.) The justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the

(*a*) One of several owners may be proceeded against for penalties; *R.* v. *Brown*, 7 E. & B. 757; 26 L. J. M. C. 183.

decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Provided that in Scotland—

(1.) This section shall not apply to any conviction made by a sheriff :

(2.) The term "entering into a recognizance before a justice of the peace" shall mean finding caution with the clerk of the justices of the peace to the satisfaction of a justice of the peace, and the term "recognizance" shall mean a bond of caution :

(3.) In Scotland it shall be competent to any person empowered to appeal by this section, to appeal against a conviction by a sheriff to the next circuit court, or where there are no circuit courts to the high court of justiciary at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

62. All offences under this Act not declared to be misdemeanours, and all penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction.

Proceedings for the removal of a check weigher shall be deemed to be a matter on which a court of summary jurisdiction has authority by law to make an order in pursuance of the Summary Jurisdiction Acts, and summary orders under this Act may be made on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted—

(*a.*) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace and sitting alone or with others at some court or other place appointed for the administration of justice ; or,

(*b.*) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of the sheriff or

some other magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace, and sitting alone or with others at some court or other place appointed for the administration of justice ; or,

(c.) In Ireland, within the police district of Dublin metropolis of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions.

63. In every part of the United Kingdom the following provisions shall have effect :

(1.) Any complaint or information made or laid in pursuance of this Act shall be made or laid within three months from the time when the matter of such complaint or information respectively arose :

(2.) The description of any offence under this Act in the words of this Act shall be sufficient in law :

(3.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant :

(4.) The owner, agent, or manager may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person :

(5.) The court shall, if required by either party, cause minutes of the evidence to be taken and preserved :

(6.) A court of summary jurisdiction shall not impose a penalty under this Act exceeding fifty pounds, but any such court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount.

64. No prosecution shall be instituted against the owner, agent, or manager of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State ; and in the case of any offence of which the owner, agent, or manager of a mine is not guilty, if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner, agent, or manager, if satisfied that he had taken such reasonable means as aforesaid.

65. In Scotland the following provisions shall have effect :

(1.) All jurisdictions, powers, and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that court :

(2.) Every person found liable under this Act by a court of summary jurisdiction in any penalty, or to pay any money or costs by this Act directed to be recovered as penalties, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864 :

(3.) In Scotland any penalty exceeding fifty pounds shall be recovered and enforced in the same manner in which any penalty due to Her Majesty under any Act of Parliament may be recovered and enforced.

66. Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence.

If the court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the Court may adjourn the case to enable such proceedings to be taken.

67. A person who is the owner, agent, or manager of any mine to which this Act applies, or the father, son, or brother of such owner, agent, or manager, shall not act as a court or member of a court of summary jurisdiction in respect of any offence under this Act.

68. Where a penalty is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, a Secretary of State may (if he think fit) direct such penalty to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by such explosion, accident, or offence, or among some of them.

Provided that—

(1.) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence :

(2.) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident, or offence.

Save as aforesaid, all penalties imposed in pursuance of this Act shall be paid into the receipt of Her Majesty's Exchequer, and shall be carried to the Consolidated Fund.

In Ireland all penalties imposed and recovered under this Act shall be

applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

69. The owner, occupier, or manager of every mine shall on the first of January every year, and at any other time when required by the Secretary of State, send to the inspector of his district a return of facts relating to his mine in the form given in Schedule Four.

Miscellaneous.

70. If any question arises whether a mine is a mine to which this Act or the Metalliferous Mines Regulation Act, 1872, applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final.

71. All notices under this Act shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served or sent by or to an inspector may be either delivered personally, or served and sent by post by a prepaid letter, and if served or sent by post, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

72. In this Act, unless the context otherwise requires,—

The term "mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, and sidings, both below ground and above ground, in and adjacent to a mine and any such shaft, level, and inclined plane, and belonging to the mine :

The term "shaft" includes pit :

The term "plan" includes a map and section, and a correct copy or tracing of any original plan as so defined :

The term "owner" (*b*), when used in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine ; but any contractor for the working of any mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability :

(*b*) See *Stott* v. *Dickinson* (1876), 34 L. T. 291.

The term "agent" (*c*), when used in relation to any mine, means any person having, on behalf of the owner, care or direction of any mine, or of any part thereof, and superior to a manager appointed in pursuance of this Act :

The term "Secretary of State" means one of Her Majesty's principal Secretaries of State :

The term "child" means a child under the age of thirteen years :

The term "young person" means a person of the age of thirteen years and under the age of sixteen years :

The term "woman" means a female of the age of sixteen years and upwards :

The term "Summary Jurisdiction Acts" means as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales, with respect to summary convictions and orders," and any Acts amending the same :

As to Scotland, "The Summary Procedure Act, 1864 :"

As to Ireland, within the police district of Dublin Metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same :

The term "Court of Summary Jurisdiction" means—

In England and Ireland, any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to :

In Scotland, any justice or justices of the peace, sheriff, or other magistrate, to the proceedings before whom for the trial or prosecution of any offence, or for the recovery of any penalty under any Act of Parliament, the provisions of the Summary Jurisdiction Acts may be applied.

73. In the application of this Act to Scotland—

(1.) The term "Attorney-General" means the Lord Advocate :

(2.) The term "injunction" means interdict :

(3.) The term "misdemeanour" means "crime and offence :"

(4.) The term "chairman of quarter sessions" means the sheriff of the county :

(5.) The term "sheriff" includes sheriff substitute :

(6.) The term "attending on subpœna before a court of record" means attending on citation the Court of Justiciary :

(*c*) As to who is "agent," see *Stokes* v. *Mellor* (1875), 39 J. P. 788.

(7.) The Queen's and Lord Treasurer's Remembrancer shall perform the duties of a master of one of the superior courts under this Act:

(8.) The term "stipendiary magistrate" means a sheriff or sheriff substitute:

(9.) Notices of explosions, accidents, loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate:

(10.) Section sixteen of "The Public Health (Scotland) Act, 1867," shall be substituted for "section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866."

74. The persons who at the commencement of this Act are acting as inspectors under the Acts hereby repealed shall continue to act in the same manner as if they had been appointed under this Act.

75. The special rules which at the commencement of this Act are in force under any Act hereby repealed in any mine to which this Act applies shall continue to be the special rules in such mine until special rules are established under this Act for such mine, and while they so continue shall be of the same force as if they were established under this Act.

76. The Acts described in Schedule Three to this Act are hereby repealed to the extent in the third column of that Schedule mentioned.

Provided that this repeal shall not affect anything done or suffered before the commencement of this Act, and all offences committed and penalties incurred before the commencement of this Act may be punished and recovered in the same manner as if this Act had not passed.

SCHEDULES.

SCHEDULE I.

Table of maximum Fees to be paid in respect of Certificates of Managers of Mines.

By an applicant for examination . . .	Two pounds.
By applicant for certificate of service for registration	Five shillings.
For copy of certificate	Five shillings.

SCHEDULE II.

Proceedings of Board of Examinations.

1. The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions :—

(*a.*) The first meeting shall be summoned by the inspector of the district, and shall be held on such day as may be fixed by a Secretary of State ;

(*b.*) An extraordinary meeting may be held at any time on the written requisition of three members of the board addressed to the chairman ;

(*c.*) The quorum to be fixed by the board shall consist of not less than three members ;

(*d.*) Every question shall be decided by a majority of votes of the members present and voting on that question ;

(*e.*) The names of the members present, as well as of those voting upon each question, shall be recorded ;

(*f.*) No business shall be transacted unless notice in writing of such business has been sent to every member of the board seven days at least before the meeting.

2. The board shall from time to time appoint some person to be chairman, and one other person to be vice-chairman.

3. If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting, and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be chairman of such meeting.

4. In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.

5. The appointment of an examiner may be made by a minute of the board signed by the chairman.

6. The board shall keep minutes of their proceedings, which may be inspected or copied by a Secretary of State, or any person authorised by him to inspect or copy the same.

SCHEDULE III.

Date of Act.	Title of Act.	Extent of Repeal.
5 & 6 Vict. c. 99	An Act to prohibit the employment of women and girls in mines and collieries, to regulate the employment of boys, and to make other provisions relating to persons working therein.	The whole Act so far as it relates to mines to which this Act applies.
23 & 24 Vict. c. 151	An Act for the regulation and inspection of mines.	Sections one to five, both inclusive, so far as they relate to mines to which this Act applies, and the residue of the Act entirely.
25 & 26 Vict. c. 79.	An Act to amend the law relating to coal mines.	The whole Act.

SCHEDULE IV.

Mines Regulation and Inspection.

Annual Return from Owner or Agent.

Name of Colliery_____

Name of Pit_____ Name of Seam _____

Year ending the _____ day of _____ 187 .

Average Number of Persons employed daily.		Mode of Ventilation.	Furnace or Fan, with Description.	Diameter and Depth of downcast and upcast Shafts.				Number of Splits and Quantity.		Average Length of Airways.	Sectional Area of Airways.	Average Total Quantity of fresh Air in cubic feet per minute.
				Downcast.		Upcast.						
Above Ground.	Under Ground.			Diameter in feet.	Depth in feet.	Diameter in feet.	Depth in feet.	Splits.	Quantity in cubic feet per minute.			

35 & 36 VICT. c. 77 (1872).

An Act to consolidate and amend the Law relating to Metalliferous Mines.

WHEREAS it is expedient to amend the law relating to the regulation and inspection of mines other than mines to which the Coal Mines Regulation Act, 1872, applies:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as "The Metalliferous Mines Regulation Act, 1872."

2. This Act shall not come into operation until the first day of January, one thousand eight hundred and seventy-three, which date is in this Act referred to as the commencement of this Act.

3. This Act shall apply to every mine (*a*) of whatever description other than a mine to which the Coal Mines Regulation Act, 1872, applies.

PART I.

Employment of Women, Young Persons, and Children.

4. No boy under the age of twelve years (*b*), and no girl or woman of any age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground.

5. A boy of the age of twelve years and under the age of thirteen years, and a male young person of the age of thirteen and under the age of sixteen years shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground for more than fifty-four hours in any one week, or more than ten hours in any one day, or otherwise than in accordance with the regulations following; that is to say,

(1.) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of em-

(*a*) See sec. 3 of Mines (Coal) Regulation Act. A slate quarry worked by means of underground workings and levels, within the Act, *Sim* v. *Evans* (1875), 23 W. R. 730.

(*b*) Sec. 4 of the Mines (Coal) Act, says *ten*.

ployment; provided always, that in the case of boys and young male persons whose employment is at such distance from their ordinary place of residence that they do not return there during the intervals of labour, and who are not employed during more than forty hours in any week, an interval of not less than eight hours shall be allowed between each period of employment:

(2.) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface:

(3.) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night.

6. The owner (*c*) or agent of every mine to which this Act applies shall keep in the office at the mine, or in the principal office of the mine belonging to the same owner in the district in which the mine is situated, a register, and shall cause to be entered in such register the name, age, residence, and date of first employment of all boys of the age of twelve and under the age of thirteen years, and of all male young persons of the age of thirteen and under the age of sixteen years who are employed in the mine below ground, and of all women, young persons, and children employed above ground in connexion with a mine, and shall produce such register to any inspector under this Act at the mine at all reasonable times when required by him, and allow him to inspect and copy the same.

The immediate employer of every boy or male young person of the ages aforesaid, other than the owner or agent of the mine, before he causes such boy or male young person to be in any mine to which this Act applies below ground, shall report to the owner or agent of such mine, or some person appointed by such owner or agent, that he is about to employ him in such mine.

7. Where there is a shaft (*d*), inclined plane, or level in any mine to which this Act applies, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up, down or along such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal, or by manual labour, a person shall not be allowed to have charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith, unless he is a male of at least eighteen years of age.

Where the engine, windlass, or gin is worked by an animal, the person under whose direction the driver of the animal acts shall, for the purposes of this section, be deemed to be the person in charge of the

(*c*) See s. 41. Owner does not, as in the Coal Mines Act (s. 72), include a contractor.

(*d*) See s. 41.

engine, windlass, or gin, but such driver shall not be under twelve years of age.

8. If any person contravenes or fails to comply with any provision of this Act with respect to the employment of women, girls, young persons, or boys, or to the register of or report respecting boys and male young persons, or to the employment of persons about any engine, windlass, or gin, he shall be guilty of an offence against this Act; and in case of any such contravention or non-compliance by any person whomsoever in the case of any mine, the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this Act to prevent such contravention or non-compliance.

If it appear that a boy or young person (*e*) or a person employed about an engine, windlass, or gin, was employed on the representation of his parent or guardian that he was of that age at which his employment would not be in contravention of this Act, and under the belief in good faith that he was of that age, the owner or agent of the mine and the immediate employer shall be exempted from any penalty, and the parent or guardian shall, for such misrepresentation, be deemed guilty of an offence against this Act.

Wages.

9. No wages shall be paid to any person employed in or about any mine to which this Act applies at or within any public house, beer shop, or place for the sale of any spirits, wine, beer, cyder, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith.

Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section shall be guilty of an offence against this Act, and in the event of any such contravention or non-compliance in the case of any mine by any person whomsoever the owner and agent (*f*) of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

Returns, Notices, and Abandonment.

10. [Repealed by 38 & 39 Vict. c. 39, s. 1.]

11. Where in or about any mine to which this Act applies, whether above or below ground, either—

(*e*) In s. 15 of Mines (Coal) Regulation Act, "child, boy, or young person."

(*f*) In s. 16 of Mines (Coal) Regulation Act, "owner, agent, and manager."

(1.) loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder, or of any steam boiler ; or

(2.) loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever,

the owner or agent of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident and of the loss of life or personal injury occasioned thereby to the inspector of the district on behalf of a Secretary of State, and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively.

Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State within twenty-four hours after such death comes to the knowledge of the owner or agent.

Every owner or agent who fails to act in compliance with this section shall be guilty of an offence against this Act.

12. In any of the following cases, namely,

(1.) Where any working is commenced for the purpose of opening a new shaft for any mine to which this Act applies ;

(2.) Where a shaft of any mine to which this Act applies is abandoned or the working thereof discontinued ;

(3.) Where the working of a shaft of any mine to which this Act applies is recommenced after any abandonment or discontinuance for a period exceeding two months ; or,

(4.) Where any change occurs in the name of, or in the name of the owner or agent of, a mine to which this Act applies, or in the officers of any incorporated company which is the owner of a mine to which this Act applies ;

the owner or agent of such mine shall give notice thereof to the inspector of the district within two months after such commencement, abandonment, discontinuance, recommencement, or change, and if such notice is not given, the owner or agent shall be guilty of an offence against this Act.

Provided that—

(1.) This section shall apply only to any working or mine in which more than twelve persons are ordinarily employed below ground ; and

(2.) In the case of a partnership working a mine within the stannaries of Devon and Cornwall, if notice of every change in the purser of the partnership is sent as required by this section, notice of a change in the members of such partnership need not be sent in pursuance of this section.

13. Where any mine to which this Act applies is abandoned or the working thereof discontinued, at whatever time such abandonment or

discontinuance occurred, the owner thereof, and every other person interested in the minerals of the mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents.

Provided that—

(1.) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine (*g*), be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect:

(2.) Where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within fifty yards of any highway, road, footpath, or place of public resort, or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous:

(3.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section he shall be guilty of an offence against this Act.

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, or is required by an inspector as aforesaid to be fenced, shall be deemed to be a nuisance within the meaning of section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866 (*h*).

14. Where any mine to which this Act applies in which more than twelve persons have ordinarily been employed below ground is abandoned, the owner of such mine at the time of the abandonment shall, within three months after such abandonment, send to a Secretary of State an accurate plan, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan last used in the mine is constructed on, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Secretary of State; but no person other than an inspector shall be at liberty to inspect or to copy such plan within ten

(*g*) *Evans* v. *Mostyn* (1877), L. R. 2 C. P. D. 547; 47 L. J. M. C. 25. Respondents, owners in fee of mines and minerals, demised lead mines for a term of years, subject to rent or royalties; lessors had a lien upon the minerals raised for such rent or royalties; the lessees ceased working the mine, and allowed it to remain insufficiently fenced: held that, though the lease was still in operation, the respondents were liable.

(*h*) See note (*q*) to Coal Mines Regulation Act.

years of its receipt by the Secretary of State without the license of such Secretary of State.

Every person who fails to comply with this section shall be guilty of an offence against this Act.

Inspection.

15. A Secretary of State may from time to time appoint any fit persons to be inspectors of mines to which this Act applies, and assign them their duties, and may award them such salaries as the Commissioners of Her Majesty's Treasury may approve, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the London Gazette.

Any such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of the United Kingdom with reference to which the term is used.

Any person appointed or acting as inspector under The Coal Mines Regulation Act, 1872, if directed by a Secretary of State to act as an inspector under this Act may so act and shall be deemed to be an inspector under this Act.

16. Any person who practises or acts or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager, viewer, agent, or valuer of mines, or arbitrator in any differences arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine (whether such mine is one to which this Act applies or not), shall not act as an inspector of mines under this Act.

17. An inspector under this Act shall have power to do all or any of the following things; namely,

(1.) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine to which this Act applies:

(2.) To enter, inspect, and examine any mine to which this Act applies, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine:

(3.) To examine into and make inquiry respecting the state and condition of any mine to which this Act applies, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules (if any) for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto:

(4.) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner and agent of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination, or inquiry under this Act in relation to such mine, shall be guilty of an offence against this Act.

18. If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector find any mine to which this Act applies, or any part thereof, or any matter, thing, or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, such inspector may give notice in writing thereof to the owner or agent of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied ; and unless the same be forthwith remedied the inspector shall also report the same to a Secretary of State.

If the owner or agent of the mine objects to remedy the matter complained of in the notice, he may, within twenty days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to a Secretary of State ; and thereupon the matter shall be determined by arbitration in manner provided by this Act ; and the date of the receipt of such objection shall be deemed to be the date of the reference.

If the owner or agent fail to comply either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection or the time of making of the award (as the case may be), he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of such offence.

Provided that the court, if satisfied that the owner or agent has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such offence, and, if the works are completed within a reasonable time, no penalty shall be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.

19. The owner or agent of every mine to which this Act applies shall keep in the office at the mine, or in the principal office of the mines belonging to the same owner in the district in which the mine is situated, an accurate plan of the workings of such mine, showing the workings up to at least six months previously, other than workings which were last discontinued at a date more than twelve months before the commencement of this Act.

The owner or agent of the mine shall produce to an inspector under this Act, at one of the aforesaid offices, such plan, and shall, if requested by the inspector, mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same.

If the owner or agent of any mine fails to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and, further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner or agent to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time, at the expense of the owner of the mine, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan used in the mine is constructed on.

If the owner or agent fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector, to make or cause to be made such plan, he shall be guilty of an offence against this Act.

Provided that this section shall apply only to a mine to which this Act applies, and in which more than twelve persons are ordinarily employed below ground (*i*).

20. Every inspector under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament.

A Secretary of State may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient.

Arbitration.

21. With respect to arbitrations under this Act, the following provisions shall have effect:

(1.) The parties to the arbitration are in this section deemed to be the owner or agent of the mine on the one hand, and an inspector of mines on behalf of the Secretary of State on the other:

(2.) Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator:

(*i*) Note difference from s. 47 of Mines (Coal) Regulation Act.

(3.) No person shall act as arbitrator or umpire under this Act who is employed in, or in the management of, or is interested in the mine to which the arbitration relates :

(4.) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party :

(5.) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section :

(6.) If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final :

(7.) If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator shall be final :

(8.) In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made :

(9.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under thei hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned :

(10.) The arbitrators, before they enter upon the matters referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ :

(11.) If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place :

(12.) If the arbitrators fail or refuse or for seven days after the request of either party neglect to appoint an umpire, then on

the application of either party an umpire shall be appointed by the chairman of the general or quarter sessions of the peace within the jurisdiction of which the mine is situate :

(13.) The decision of every umpire on the matters referred to him shall be final :

(14.) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :

(15.) The arbitrators and their umpire, or any of them, may examine the parties and their witnesses on oath, they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult :

(16.) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties or one of them according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who, on the written application of either of the parties, shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner or agent may in the event of nonpayment be recovered in the same manner as penalties under this Act :

(17.) Every person who is appointed an arbitrator or umpire under this section shall be a practical mining engineer, or a person accustomed to the working of mines, but when an award has been made under this section the arbitrator or umpire who made the same shall be deemed to have been duly qualified as provided by this section.

Coroners.

22. With respect to coroners' inquests on the bodies of persons whose death may have been caused by explosions or accidents in mines to which this Act applies, the following provisions shall have effect :

(1.) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn such inquest unless an inspector, or some person on behalf of a Secretary of State, is present to watch the proceedings :

(2.) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector of the district notice in writing of the time and place of holding the adjourned inquest :

(3.) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof:

(4.) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn:

(5.) An inspector shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner:

(6.) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or default:

(7.) Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred shall not be qualified to serve on the jury empannelled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART II.

Rules.

General Rules.

23. The following general rules shall, so far as may be reasonably practicable, be observed in every mine to which this Act applies:

(1.) An adequate amount of ventilation shall be constantly produced in every mine to such an extent that the shafts, winzes, sumps, levels, underground stables, and working places of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.

(2.) Gunpowder or other explosive or inflammable substance shall only be used underground in the mine as follows:

(*a.*) It shall not be stored in the mine:

(*b.*) It shall not be taken into the mine, except in a case or canister containing not more than four pounds :

(*c.*) A workman shall not have in use at one time in any one place more than one of such cases or canisters :

(*d.*) In charging holes for blasting, except in mines excepted from the operation of this section by the Secretary of State, an iron or steel pricker shall not be used, and a person shall not have in his possession in the mine underground any iron or steel pricker, and an iron or steel tamping rod or stemmer shall not be used for ramming either the wadding or the first part of the tamping or stemming on the powder :

(*e.*) A charge of powder which has missed fire shall not be unrammed :

(3.) Every underground plane on which persons travel, which is self-acting, or worked by an engine, windlass, or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than twenty yards, with sufficient man-holes for places of refuge.

(4.) Every road on which persons travel underground, where the produce of the mine in transit exceeds ten tons in any one hour over any part thereof, and where the load is drawn by a horse or other animal, shall be provided, at intervals of not more than one hundred yards, with sufficient spaces for places of refuge, each of which spaces shall be of sufficient length, and of at least three feet in width between the waggons running on the tramroad and the side of the road ; and the Secretary of State may, if he see fit, require the inspector to certify whether the produce of the mine in transit on the road aforesaid does or does not ordinarily exceed the weight as aforesaid.

(5.) Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or such space so as to prevent access thereto.

(6.) The top of every shaft which was opened before the commencement of the actual working for the time being of the mine, and has not been used during such actual working, shall, if so required in writing by the inspector of the district, be securely fenced, and the top of every other shaft which for the time being is out of use, or used only as an air shaft, shall be securely fenced.

(7.) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used.

(8.) Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined, or otherwise made secure.

(9.) Where one portion of a shaft is used for the ascent and descent of persons by ladders or a man-engine, and another portion of the same

shaft is used for raising the material gotten in the mine, the first-mentioned portion shall be cased or otherwise securely fenced off from the last-mentioned portion.

(10.) Every working shaft in which persons are raised shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every entrance for the time being in work between the surface and the bottom of the shaft.

(11.) A sufficient cover overhead shall be used when lowering or raising persons in every working shaft, except where it is worked by a windlass, or where the person is employed about the pump or some work of repair in the shaft, or where a written exemption is given by the inspector of the district.

(12.) A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or load.

(13.) There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also, if the drum is conical, such other appliances, as may be sufficient to prevent the rope from slipping.

(14.) There shall be attached to every machine worked by steam, water, or mechanical power, and used for lowering or raising persons, an adequate break, and also a proper indicator (in addition to any mark on the rope) which shows to the person who works the machine the position of the cage or load in the shaft.

(15.) A ladder permanently used for the ascent or descent of persons in the mine shall not be fixed in a vertical or overhanging position, and shall be inclined at the most convenient angle which the space in which the ladder is fixed allows, and every such ladder shall have substantial platforms at intervals of not more than twenty yards.

(16.) If more than twelve persons are ordinarily employed in the mine below ground, sufficient accommodation shall be provided above ground near the principal entrance of the mine, and not in the engine-house or boiler-house, for enabling the persons employed in the mine to conveniently dry and change their dresses.

(17.) Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

(18.) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

(19.) No person shall wilfully damage, or without proper authority remove or render useless, any fencing, casing, lining, guide, means of

signalling, signal, cover, chain, flange, horn, break, indicator, ladder, platform, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Act, and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any person whomsoever, being proved, the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

Special Rules.

24. The owner or agent of any mine to which this Act applies may, if he think fit, transmit to the inspector of the district, for approval by a Secretary of State, rules (referred to in this Act as special rules) for the conduct and guidance of the persons acting in the management of such mine, or employed in or about the same, so as to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules, when established, shall be signed by the inspector who is inspector of the district at the time such rules are established, and shall be observed in and about every such mine in the same manner as if they were enacted in this Act.

If any person who is bound to observe the special rules established for any mine acts in contravention of or fails to comply with any of such special rules, he shall be guilty of an offence against this Act, and also the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

25. The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom may be sent by any of the persons employed in the mine to the inspector of the district, at his address, stated in such notice, shall, during not less than two weeks before such rules are transmitted to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notice have been so posted up shall be sent to the inspector with the rules signed by the person sending the same.

If the rules are not objected to by the Secretary of State within forty days after their receipt by the inspector they shall be established.

If the owner or agent makes any false statement with respect to the

posting up of the rules and notices he shall be guilty of an offence against this Act.

26. If the Secretary of State is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety of the persons employed in or about the mine, or are unreasonable, he may, within forty days after the rules are received by the inspector, object to the rules, and propose to the owner or agent in writing any modifications in the rules by way either of omission, alteration, substitution, or addition.

If the owner or agent do not, within twenty days after the modifications proposed by the Secretary of State are received by him, object in writing to them, the proposed special rules, with such modifications, shall be established.

If the owner or agent sends his objection in writing within the said twenty days to the Secretary of State, the matter shall be referred to arbitration, and the date of the receipt of such objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration.

27. After special rules are established under this Act in any mine, the owner or agent of such mine may from time to time propose in writing to the inspector of the district for the approval of a Secretary of State any amendment of such rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as near as may be, as they apply to the original rules.

A Secretary of State may from time to time propose in writing to the owner or agent of a mine in which there are no special rules, any special rules, and to the owner or agent of a mine in which there are special rules, any new special rules, or any amendment to such special rules, and the provisions of this Act with respect to a proposal of the Secretary of State for modifying the special rules transmitted by the owner or agent of a mine shall apply to all such proposed special rules, new special rules, and amendments in like manner, as near as may be, as they apply to such proposal.

28. For the purpose of making known the special rules (if any) and the provisions of this Act to all persons employed in and about each mine to which this Act applies, an abstract of the Act supplied, on the application of the owner or agent of the mine, by the inspector of the district on behalf of a Secretary of State, and an entire copy of the special rules (if any) shall be published as follows :

(1.) The owner or agent of such mine shall cause such abstract and rules (if any), with the name and address of the inspector of the district, and the name of the owner or agent appended thereto, to be posted up in legible characters, in some conspicuous place at or near the mine, where they may be con-

veniently read by the person employed; and so often as the same become defaced, obliterated, or destroyed, shall cause them to be renewed with all reasonable despatch:

(2.) The owner or agent shall supply a printed copy of the abstract and the special rules (if any) gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner or agent are paid:

(3.) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

If any owner or agent fail to act in compliance with this section he shall be guilty of an offence against this Act, but the owner shall not be deemed guilty if he prove that he has taken all reasonable means, by enforcing the observance of this section, to prevent such non-compliance.

29. Every person who pulls down, injures, or defaces any proposed special rules, notice, abstract, or special rules when posted up in pursuance of the provisions of this Act with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

30. An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act, and have been signed by the inspector.

PART III.

SUPPLEMENTAL.

Penalties.

31. Every person employed in or about a mine, other than an owner or agent, who is guilty of any act or omission which in the case of an owner or agent would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.

Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is an owner or agent, twenty pounds, and if he is any other person two pounds, for each offence; and if an inspector has given written notice of any such offence, to a further penalty not exceeding one pound for every day after such notice that such offence continues to be committed.

32. Where a person who is an owner or agent or a person employed in or about a mine is guilty of any offence against this Act which, in the

opinion of the court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months.

If any person feel aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, by which conviction imprisonment is adjudged in pursuance of this section, or by which conviction the sum adjudged to be paid amounts to or exceeds half the maximum penalty, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1.) The appeal shall be made to the next court of general or quarter sessions for the county, division, or place in which the cause of appeal has arisen, holden not less than twenty-one days after the decision of the court from which the appeal is made :

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof :

(3.) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow :

(4.) The justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just :

Provided that in Scotland—

(1.) This section shall not apply to any conviction made by a sheriff :

(2.) The term "entering into a recognizance before a justice of the peace" shall mean finding caution with the clerk of the

justices of the peace to the satisfaction of a justice of the peace, and the term "recognizance" shall mean a bond of caution :

(3.) It shall be competent to any person empowered to appeal by this section, to appeal against a conviction by a sheriff to the next circuit court, or where there are no circuit courts to the high court of justiciary at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

33. All offences and penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction.

The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted—

(*a.*) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace and sitting alone or with others at some court or other place appointed for the administration of justice ; or

(*b.*) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of the sheriff or some other magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace, and sitting alone or with others at some court or other place appointed for the administration of justice ; or

(*c.*) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions.

34. In every part of the United Kingdom the following provisions shall have effect :

1. Any complaint or information made or laid in pursuance of this Act shall be made or laid within three months from the time when the matter of such complaint or information respectively arose :
2. The description of any offence under this Act in the words of this Act shall be sufficient in law :
3. Any exception, exemption, proviso, excuse, or qualification,

whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant:

4. The owner or agent may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person:
5. The Court shall, if required by either party, cause minutes of the evidence to be taken and preserved.

35. No prosecution shall be instituted against the owner or agent of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State; and in the case of any offence of which the owner or agent of a mine is not guilty, if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner or agent, if satisfied that he had taken such reasonable means as aforesaid.

36. In Scotland the following provisions shall have effect:

(1.) All jurisdictions, powers, and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that court:

(2.) Every person found liable under this Act in any penalty, or to pay any money or costs by this Act directed to be recovered as penalties, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864.

37. Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence.

If the court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the court may adjourn the case to enable such proceedings to be taken.

38. Where a penalty is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, the Secretary of State may (if he think fit) direct such penalty to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by such explosion, accident, or offence or among some of them:

Provided that—

(1.) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence :

(2.) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident, or offence :

Save as aforesaid, all penalties imposed in pursuance of this Act shall be paid into the receipt of Her Majesty's Exchequer, and shall be carried to the Consolidated Fund.

In Ireland all penalties imposed and recovered under this Act shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

Miscellaneous.

39. If any question arises whether a mine is a mine to which this Act, or the Coal Mines Regulation Act, 1872, applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final.

40. All notices under this Act shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served or sent by or to an inspector or Secretary of State may be either delivered personally, or served and sent by post, by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service or sending, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

41. In this Act, unless the context otherwise requires,—

The term "mine" (*k*) includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, and sidings, both below ground and above ground, in and adjacent to a mine, and any such shaft, level, and inclined plane, and belonging to the mine :

The term "shaft" includes pit :

The term "plan" includes a map and section, and a correct copy or tracing of any original plan as so defined :

The term "owner" when used in relation to any mine means any person or body corporate who is the immediate proprietor, or lessee,

(*k*) A slate quarry worked by underground levels within the section. *Sim* v *Evans* (1875), 23 W R. 730.

or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mines :

The term "agent" when used in relation to any mine means any person having, on behalf of the owner, care or direction of any mine, or of any part thereof :

The term "Secretary of State" means one of Her Majesty's Principal Secretaries of State :

The term Summary Jurisdiction Acts means as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter 43, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same :

As to Scotland, "The Summary Procedure Act, 1864 :"

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same :

The term "Court of Summary Jurisdiction" means—

In England and Ireland, any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts, or any Acts therein referred to :

In Scotland, any justice or justices of the peace, sheriff, or other magistrate, to the proceedings before whom for the trial or prosecution of any offence, or for the recovery of any penalty under any Act of Parliament, the provisions of the Summary Jurisdiction Acts may be applied.

42. In the application of this Act to Scotland—

(1.) The term "chairman of quarter sessions" means the sheriff of the county :

(2.) The term "sheriff" includes "sheriff substitute :"

(3.) The Queen's and Lord Treasurer's Remembrancer shall perform the duties of a Master of one of the Superior Courts under this Act :

4.) Notices of explosions, accidents, and loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate :

(5.) Section sixteen of "The Public Health (Scotland) Act, 1867," shall be substituted for section eight of "The Nuisances Re-

moval Act for England, 1855," as amended and extended by "The Sanitary Act, 1866."

43. This Act shall apply to the Isle of Man, with the following modifications:

(1.) The term "chairman of quarter sessions" means the governor, lieutenant governor, or deputy governor of the said Isle for the time being:

(2.) The clerk of the rolls shall perform the duties of a master of one of the superior courts under this Act:

(3.) The law of the said Isle as to the abatement or removal of nuisances affecting the health of Her Majesty's subjects shall be substituted for section eight of "The Nuisances Removal Act for England, 1855," as amended and extended by "The Sanitary Act, 1866."

44. The persons who at the commencement of this Act are acting as inspectors under any Act hereby repealed shall continue to act in the same manner as if they had been appointed under this Act.

45. The Acts described in the Schedule to this Act are hereby repealed, so far as they are not repealed by the Coal Mines Regulation Act, 1872.

Provided that this repeal shall not affect anything done or suffered before the commencement of this Act, and all offences committed and penalties incurred before the commencement of this Act may be punished and recovered in the same manner as if this Act had not passed.

SCHEDULE.

Date of Act.	Title of Act.
5 & 6 Vict. c. 99	An Act to prohibit the employment of women and girls in mines and collieries, to regulate the employment of boys, and to make other provisions relating to persons working therein.
23 & 24 Vict. c. 151	An Act for the regulation and inspection of mines.

38 & 39 VICT. c. 39 (9th July, 1875).

An Act to amend the provisions of "The Metalliferous Mines Regulation Act, 1872," *with respect to the annual returns from Mines.*

"WHEREAS by section ten of 'The Metalliferous Mines Regulation Act, 1872,' the owner and agent of every mine was required to send annually such return as is mentioned in that section, and it is expedient to make further provision with respect to such return:"

Be it enacted as follows:

1. From and after the commencement of this Act, the owner or agent of every mine to which "The Metalliferous Mines Regulation Act, 1872," applies shall, on or before the 1st day of February in every year, send to the inspector of the district on behalf of a Secretary of State a correct return, specifying with respect to such mine, for the year ending on the preceding 31st day of December, the quantity in statute weight of the mineral dressed, and of the undressed mineral which has been sold, treated or used, during that year, and the number of persons ordinarily employed in or about such mine, below ground and above ground, distinguishing those who are employed below ground and above ground, and distinguishing the different classes and ages of the persons so employed whose hours of labour are regulated by "The Metalliferous Mines Regulation Act, 1872."

The return shall be in such form as may be from time to time prescribed by a Secretary of State, and the inspector of the district on behalf of a Secretary of State shall from time to time, on application, furnish forms for the purpose of such return.

Every owner or agent of a mine who fails to comply with this section, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against "The Metalliferous Mines Regulation Act, 1872."

Provided that—

(1.) In any mine where not more than twelve persons are employed underground, the returns specifying the quantity of mineral produced shall be made by the barmaster or other local officer, if any, employed to collect the dues or royalty; and

(2.) Where there is such a barmaster or other officer the owner or agent of such mine shall not be required to send any return specifying the number of persons employed in or about such mine.

2. This Act shall come into operation on the 2nd day of August, 1875, which day is in this Act referred to as the commencement of this Act.

3. This Act shall be construed as one with "The Metalliferous Mines

Regulation Act, 1872," and that Act and this Act may be cited together as "The Metalliferous Mines Regulation Acts, 1872 and 1875," and this Act may be cited separately as "The Metalliferous Mines Regulation Act, 1875."

4. Section 10 of "The Metalliferous Mines Regulation Act, 1872," is hereby repealed as from the commencement of this Act.

Provided that such repeal shall not affect anything done or suffered in pursuance of the said section, or any obligation or liability incurred under the said section, or any penalty incurred in respect of any offence committed against the said section, or any legal proceeding or remedy in respect of such liability or penalty; and any such legal proceeding or remedy may be carried on as if this Act had not been passed.

CHAPTER VII.

AGRICULTURAL GANGS.

30 & 31 VICT. c. 130.

An Act for the Regulation of Agricultural Gangs.

[20th August, 1867.]

WHEREAS in certain counties in *England* certain persons known as gangmasters hire children, young persons, and women with a view to contracting with farmers and others for the execution on their lands of various kinds of agricultural work: And whereas it is expedient to make regulations with respect to the employment of children, young persons, and women by gangmasters:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Agricultural Gangs Act, 1867."

2. This Act shall come into operation on the first of *January* one thousand eight hundred and sixty-eight.

3. The following words and expressions shall in this Act have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say,

"Child" shall mean a child under the age of thirteen years:

"Young Person" shall mean a person of the age of thirteen years and under the age of eighteen years:

"Woman" shall mean a female of the age of eighteen years or upwards:

"Gangmaster" shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation; and, until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them shall be deemed to have been hired with the aforesaid view:

"Agricultural Gang" shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster.

4. The following regulations shall be observed by every gangmaster with respect to the employment of children, young persons, and women :

[(1.) No child under the age of eight years shall be employed in any agricultural gang : (*a*)]

(2.) No females shall be employed in the same agricultural gang with males :

(3.) No female shall be employed in any gang under any male gangmaster unless a female licensed to act as gangmaster is also present with that gang :

And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed.

5. No person shall act as a gangmaster unless he has obtained a licence to act as such under this Act.

Any person acting as a gangmaster without a licence under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts.

6. No licence shall be granted to any person who is licensed to sell beer, spirits, or any other exciseable liquor.

7. Licences to gangmasters shall be granted by two or more justices in divisional petty sessions, on due proof to the satisfaction of such justices that the applicant for a licence is of good character, and a fit person to be intrusted with the management of an agricultural gang.

The justices shall annex to their licence a condition limiting, in such manner as they think expedient, the distances within which the children employed by such gangmaster are to be allowed to travel on foot to their work, and any gangmaster violating the condition so annexed to his licence shall for each offence be liable to a penalty not exceeding ten shillings.

Any person aggrieved by the refusal of the justices to grant him a licence to act as gangmaster may appeal to the next practicable Court of General or Quarter Sessions ; and it shall be lawful for such court, if they see cause, to grant a licence to the applicant, which shall be of the same validity as if it had been granted by the justices in Petty Sessions.

8. Licences under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original licence is granted.

(*a*) 36 & 37 Vict. c. 67, s. 16, substituted ten for eight. By s. 5 of the Elementary Education Act, 1876, 39 & 40 Vict. c. 79, employment of children under ten is generally prohibited.

9. There shall be charged in respect of each grant or renewal of licence a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the licence are applicable.

10. On any conviction of a gangmaster of any offence against this Act the justices who convict him shall endorse on his licence the fact of such conviction ; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding three months ; and on any conviction of any gangmaster of a third offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding two years.

And after a fourth conviction for an offence against this Act the gangmaster shall be disqualified from holding or receiving a licence under this Act.

11. All penalties under this Act may be recovered summarily before two or more justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen *Victoria*, chapter forty-three, intituled, *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within* England *and* Wales *with respect to summary Convictions and Orders*, or any Act amending the same.

12. This Act shall not apply to *Scotland* or *Ireland*.

CHAPTER VIII.

CHILDREN'S DANGEROUS PERFORMANCES ACT.

42 & 43 VICT. c. 34 (1879).

An Act to regulate the employment of Children in places of public amusement in certain cases.

WHEREAS it is expedient to regulate the employment of children in places of public amusement in certain cases :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Children's Dangerous Performances Act, 1879.

2. This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty, which date is hereinafter referred to as the commencement of this Act.

3. From and after the commencement of this Act, any person who shall cause any child under the age of fourteen years to take part in any public exhibition or performance whereby, in the opinion of a court of summary jurisdiction, the life or limbs of such child shall be endangered, and the parent or guardian, or any person having the custody, of such child, who shall aid or abet the same, shall severally be guilty of an offence against this Act, and shall on summary conviction be liable for each offence to a penalty not exceeding ten pounds.

And where in the course of a public exhibition or performance, which in its nature is dangerous to the life or limb of a child under such age as aforesaid taking part therein, any accident causing actual bodily harm occurs to any such child, the employer of such child shall be liable to be indicted as having committed an assault ; and the court before whom such employer is convicted on indictment shall have the power of awarding compensation not exceeding twenty pounds, to be paid by such employer to the child, or to some person named by the court on behalf of the child, for the bodily harm so occasioned ; provided that no person shall be punished twice for the same offence.

4. Whenever any person is charged with an offence against this Act in respect of a child who in the opinion of the court trying the case is

apparently of the age alleged by the informant, it shall lie on the person charged to prove that the child is not of that age.

5. Every offence against this Act in respect of which the person committing it is liable as above mentioned to a penalty not exceeding ten pounds shall be prosecuted and the penalty recovered with costs in a summary manner, as follows:

In England, in accordance with the provisions of the Act eleventh and twelfth Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and of any Act or Acts amending the same; and the court of summary jurisdiction when hearing and determining an information in respect of any offence under this Act shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for the holding of petty sessions, or some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace;

In Scotland, in accordance with the provisions of the Summary Procedure Act, 1864, and of any Act or Acts amending the same; and

In Ireland, within the police district of Dublin metropolis in accordance with the provisions of the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland in accordance with the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending or affecting the same.

CHAPTER IX.

THE FACTORY ACT.

DURING this century the Legislature has passed various Acts with a view to secure the health and safety of women, young persons, and children working in factories. The first of these statutes (the 42 Geo. III. c. 73) was passed in 1802. Its operation was confined to cotton and woollen mills and factories. It was followed by several measures, all of which (with one exception) were repealed in 1833. After an exhaustive inquiry, conducted chiefly in the seats of the textile manufactures, a general Act (3 & 4 Will. IV. c. 103) was passed. Supplementary measures were enacted; and before the law was consolidated, no fewer than fifteen statutes, not to mention similar Acts, such as the Chimney Sweepers Acts, the Mines Regulation Acts, were in force. A multitude of partly repealed Acts was replaced by a consolidating measure.

Provisions similar to those contained in the Factory Act as to the fencing of machinery are to be found in the Threshing Machines Act of 1878 (41 & 42 Vict. c. 12).

41 VICT. c. 16 (1878).

ARRANGEMENT OF SECTIONS.

Preliminary.

Sect.
1. Short title.
2. Commencement of Act.

PART I.

GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

(1.) *Sanitary Provisions.*

3. Sanitary condition of factory and workshop.

4. Notice by inspector to sanitary authority of sanitary defects in factory or workshop.

(2.) *Safety.*

5. Fencing of certain machinery.
6. Fencing of other dangerous machinery of which notice is given by inspector.
7. Fencing of dangerous vats or structures of which notice is given by inspector.
8. Fixing of grindstones securely and replacing of faulty grindstone when notice is given by inspector.
9. Restriction on cleaning of machinery while in motion, or working between parts of self-acting machinery.

(3.) *Employment and Meal Hours.*

10. Period of employment of children, young persons, and women.
11. Period of employment, &c., for young persons and women in a textile factory.
12. Period of employment for children in textile factory.
13. Period of employment, &c., for young persons and women in non-textile factory, and for young persons in workshop.
14. Period of employment for children in non-textile factory and workshop.
15. Period of employment, time for meals, and length of continuous employment for women in workshop.
16. Period of employment and time for meals for children and young persons in domestic workshop.
17. Meal times to be simultaneous, and employment during meal times forbidden.
18. Regulations as to period of employment on Saturday of young persons or women employed only eight hours a day.
19. Notice fixing period of employment, hours of meals, and mode of employment of children.
20. Prohibition of employment of children under ten.
21. Prohibition of employment of children, young persons, and women on Sunday.

(4.) *Holidays.*

22. Days to be observed as holidays, and half holidays to be allowed in factories and workshops.

(5.) *Education of Children.*

23. Attendance at school of children employed in a factory or workshop.
24. Obtaining of school attendance certificate by occupier of factory or workshop.

25. Payment by occupier on application of sum for schooling of child, and deduction of it from wages.
26. Employment as young person of child of 13 on obtaining an educational certificate.

(6.) *Certificates of Fitness for Employment.*

27. Certificate of fitness for employment of children and young persons under 16 in factories.
28. Certificate of fitness for employment of children and young persons under 16 in workshops.
29. Power of inspector to require surgical certificate of capacity of child or young person under 16 for work.
30. Supplemental provisions as to certificates of fitness for employment.

(7.) *Accidents.*

31. Notice of accidents causing death or bodily injury.
32. Investigation of and report on accidents by certifying surgeon.

PART II.

Special Provisions relating to particular Classes of Factories and Workshops.

(1.) *Special Provisions for Health in certain Factories and Workshops.*

33. Limewashing and washing of the interior of factories and workshops.
34. Limewashing, painting, and washing of the interior of bakehouses.
35. Provision as to sleeping places near bakehouses.
36. Provision as to ventilation by fan in factories and workshops.
37. Protection of workers in wet-spinning.

(2.) *Special Restrictions as to Employment, Meals, and Certificates of Fitness.*

38. Prohibition of employment of children and young persons in certain factories or workshops.
39. Prohibition of taking meals in certain parts of factories and workshops.
40. In print works and bleaching and dyeing works, period of employment and times allowed for meals.
41. Power to require certificates of fitness for employment of children and young persons under 16 in certain workshops.

(3.) *Special Exceptions relaxing General Law in certain Factories and Workshops.*

(a.) *Period of Employment.*

42. Period of employment between 8 a.m. and 8 p.m. in certain cases.
43. Power to Secretary of State to allow period of employment between 9 a.m. and 9 p.m. in certain cases.
44. Power of working male young persons above 16 in lace factories.
45. Power of working male young persons above 16 in bakehouses.
46. Substitution by Secretary of State of another half holiday for Saturday.
47. Employment in Turkey red dyeing on Saturday up to 4.30 p.m.
48. Continuous employment of children, young persons, and women in certain cases.
49. Giving half holidays and holidays on different days to different sets of children, young persons, and women.
50. Employment of young persons and women by Jewish occupiers of factories or workshops.
51. Employment of Jews by Jews on Sunday.

(b.) *Meal Hours.*

52. Exception as to meal times being simultaneous, and as to employment or remaining in room where manufacturing process is carried on during meal times.

(c.) *Overtime.*

53. Power to employ young persons and women for 14 hours a day.
54. Power to employ for half an hour after end of work where process is in an incomplete state.
55. Employment of young persons, &c., in Turkey red dyeing and open-air bleaching.
56. Employment of women for 14 hours a day to preserve perishable articles.
57. Exception for factories driven by water power.

(d.) *Nightwork.*

58. Employment of male young persons at night.
59. Employment in certain letter-press printing works of male young persons of 16 at night.
60. Employment of male young persons in glass works.

(4.) *Special Exception for Domestic and certain other Factories and Workshops.*

61. Exception of domestic factories and workshops and certain other workshops from certain provisions of the Act.

62. Exception for certain descriptions of flax scutch mills from certain provisions of Act.

(5.) *Supplemental as to Special Provisions.*

63. Requirement of sanitary provisions as condition of special exceptions.
64. Power to rescind order granting or extending exception.
65. Provisions as to order of Secretary of State.
66. Provisions as to occupier availing himself of special exceptions, and registry of work under them.

PART III.

Administration, Penalties, and Legal Proceedigns.

(1.) *Inspection.*

67. Appointment, payment, &c., of inspectors of factories, and clerks and servants.
68. Powers of inspectors.
69. Restriction on entry of inspector into dwellings.
70. Certificates of appointment of inspectors.

(2.) *Certifying Surgeons.*

71. Poor Law medical officers to act where no certifying surgeon within three miles.
72. Appointment of certifying surgeons.
73. Regulations as to the grant of certificates of fitness.
74. Fees of certifying surgeons for examination of children and young persons.

(3.) *Miscellaneous.*

75. Notice of factory to be given to inspector.
76. Regulation of hours by public clock.
77. Registers to be kept in a factory or workshop.
78. Affixing in factory or workshop of abstract of Act and notices.
79. Printing or writing and service of notices and documents, &c.
80. Inspection of weights and measures used in factories and workshops.

(4.) *Fines.*

81. Fine for not keeping factory or workshop in conformity with Act.
82. Penal compensation to person injured by want of fence to machinery, &c.

83. Fine for employing children, young persons, and women contrary to the Act.
84. Fine on parent for allowing child or young person to be employed contrary to the Act, or neglecting to cause child to attend school.
85. Forgery of certificates, false entries and declarations.
86. Fine on person committing offence for which occupier is liable.
87. Power of occupier to exempt himself from fine on conviction of the actual offender.
88. Restraint on cumulative fines.

(5.) *Legal proceedings.*

89. Prosecution of offences and recovery and application of fines.
90. Appeal to quarter sessions.
91. Limitation of time and general provisions as to summary proceedings.
92. Evidence in summary proceedings.

PART IV.

DEFINITIONS, SAVINGS, APPLICATION TO SCOTLAND AND IRELAND, AND REPEAL.

(1.) *Definitions.*

93. Factories and workshops to which Act applies.
94. Definition of employment and working for hire.
95. Definition of "certified efficient school;" "recognised efficient school."
96. General definitions. "Child." "Young person." "Woman." "Parent." "Treasury." "Secretary of State." "Education Department." "Sanitary authority." "Person." "Week." "Night." "Prescribed." "Summary Jurisdiction Acts." "Court of Summary Jurisdiction." "Mill-gearing."

Special exemption of certain Trades.

97. Exemption of handicrafts in Fifth Schedule in private houses.
98. Exemption of certain home-work.

(2.) *Savings.*

99. Saving as to liability of hirer of machine where not occupier.
100. Saving for person employed in repair of machinery or of factory or workshop, or in process of curing fish.
101. Application to factories and workshops of 38 & 39 Vict. c. 55.
102. Construction of enactments, &c., referring to repealed Acts.

(3.) *Application of Act to Scotland and Ireland.*

103. Temporary saving for employment of children under ten and children over thirteen in Scotland and Ireland.
104. Certificates of birth for purposes of Act.
105. Application of Act to Scotland.
106. Application of Act to Ireland.

(4.) *Repeal.*

107. Repeal of Acts.

SCHEDULES.

FIRST SCHEDULE.

SPECIAL PROVISIONS FOR HEALTH.

Factories and Workshops in which the Employment of Young Persons and Children is restricted.

1. Restriction of employment of young persons and children ;
2. Of children, &c., in glass works ;
3. Of girls under sixteen in certain employments ;
4. Of children in metal grinding and lucifer-match dipping ;
5. Of child under eleven in dry grinding, &c.

SECOND SCHEDULE.

SPECIAL RESTRICTIONS.

Places forbidden for Meals.

As to parts of factories or workshops in which children, young persons, and women are forbidden to take meals.

THIRD SCHEDULE.

SPECIAL EXCEPTIONS.

PART I.

Period of Employment.

Employment of children, young persons, and women between 8 A.M. and 8 P.M. in certain trades.

PART II.

Meal Hours.

Cases in which provisions as to meal times are not to apply.

PART III.

Overtime.

Factories and workshops in which young persons and women may be allowed to work for fourteen hours a day under certain restrictions.

PART IV.

Additional Half Hour.

Factories in which a child, young person, or woman may be employed for an additional half hour.

PART V.

Overtime for Perishable Articles.

Factories and workshops in which women may be employed for fourteen hours a day.

PART VI.

Night Work.

Factories in which male young persons may be employed at night.

PART VII.

Spell.

Continuous employment of children, young persons, and women for five hours in certain textile factories during the winter months.

FOURTH SCHEDULE.

LIST OF FACTORIES AND WORKSHOPS.

PART I.

Non-Textile Factories.

"Print works." "Bleaching and dyeing works." "Earthenware works." "Lucifer-match works." "Percussion-cap works." "Cartridge works." "Paper-staining works." "Fustian-cutting works." "Blast furnaces." "Copper mills." "Iron mills." "Foundries." "Metal and india-rubber works." "Paper mills." "Glass works." "Tobacco factories." "Letter-press printing works." "Bookbinding works." "Flax scutch mills."

PART II.

Non-Textile Factories and Workshops.

"Hat works." "Rope works." "Bakehouses." "Lace warehouses." "Shipbuilding yards." "Quarries." "Pit-banks."

FIFTH SCHEDULE.

Special Exemptions.

Straw plaiting. Pillow-lace making. Glove-making.

SIXTH SCHEDULE.

Acts repealed.

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41 VICT. c. 16 (1878).

An Act to consolidate and amend the Law relating to Factories and Workshops.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Factory and Workshop Act, 1878.

2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act: Provided that at any time after the passing of this Act, any appointment, regulation, or order may be made, any notice issued, form prescribed, and act done which appears to a Secretary of State necessary or proper to be made, issued, prescribed, or done for the purpose of bringing this Act into operation at the commencement thereof.

PART I.

General Law relating to Factories and Workshops.

(1.) *Sanitary Provisions.*

3. A factory (*a*) and a workshop (*b*) shall be kept in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance (*c*).

(*a*) For definition, see s. 93. As to "factory" under the repealed Act, 30 & 31 Vict. c. 103, see *Palmer's Shipbuilding Co.* v. *Chaytor* (1869), L. R. 4 Q. B. 209; 19 L. T. 638; 17 W. R. 401; 10 B. & S. 177; *Kent* v. *Astley* (1869), 5 L. R. Q. B. 19; 39 L. J. M. C. 3; 21 L. T. 425. (In the former it was held that a boy employed in one of the departments of a large shipbuilder's yard was employed in a "factory." In the latter a slate quarry, a large open space, was held not to be a factory.) See also *Redgrave* v. *Lee* (1874), L. R. 9 Q. B. 363; 43 L. J. M. C. 105. (Premises consisting of ten acres, in which there was no large building under cover, and on which cement was manufactured chiefly in the open air; not a factory.) But see now sec. 93 (2).

(*b*) For definition, see s. 93.

(*c*) See as to cases to which this provision does not apply, s. 61. As

A factory or workshop shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated (*d*) in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act (*e*).

4. Where it appears to an inspector under this Act that any act, neglect, or default in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance (*f*), or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing, of such act, neglect, or default to the sanitary authority (*g*) in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon, as to that authority may seem proper for the purpose of enforcing the law.

An inspector (*h*) under this Act may, for the purposes of this section take with him into a factory or a workshop a medical officer of health, inspector of nuisances (*h*), or other officer of the sanitary authority (*i*).

(2.) *Safety.*

5. With respect to the fencing of machinery in a factory the following provisions shall have effect :

(1.) Every hoist or teagle near to which any person (*k*) is liable to pass or to be employed, and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of a steam-engine and water-wheel, shall be securely fenced (*l*) ; and

to special provisions for cleanliness, s. 33 ; and s. 101 as to Public Health Act, 1875.

(*d*) As to ventilation by fan, s. 36.

(*e*) Sec. 81.

(*f*) See s. 91 of Public Health Act of 1875 (38 & 39 Vict. c. 55), and s. 101 of the present Act ; *Norris* v. *Barnes* (1872), L. R. 7 Q. B. 537 ; 41 L. J. M. C. 154, and *Reg.* v. *Waterhouse* (1872), L. R. 7 Q. B. 545 ; 26 L. T. N. S. 761 ; 41 L. J. M. C. 115.

(*g*) Sec. 96.

(*h*) Sec. 67.

(*i*) Sec. 96.

(*k*) Not merely children, women, and young persons. See *Coe* v. *Platt* note (*l*) 752 ; *Britton* v. *Great Western Cotton Co.* (1872), L. R. 7 Ex. 130 ; 41 L. J. Ex. 99 ; 27 L. T. N. S. 125 ; 20 W. R. 525.

(*l*) The following are the chief cases as to fencing : *Coe* v. *Platt* (1851), 6 Ex. 752 ; (1852), 7 Ex. 460 ; 21 L. J. Ex. 146 ; 22 L. J. Ex. 164 ; 22 L. J. Ex. 164. (The machinery of a cotton mill was worked by a steam-engine, which drove a horizontal shaft passing along the lower floor of the factory. This shaft worked several vertical shafts, which passed through the upper floors, and so worked the machinery in the different rooms. One of the vertical shafts

(2.) Every wheel-race not otherwise secured (*m*) shall be securely fenced close to the edge of the wheel-race; and

(3.) Every part of the mill gearing (*n*) shall either be securely fenced or be in such position or of such construction as to be equally safe to every person employed in the factory as it would be if it were securely fenced; and

(4.) All fencing shall be constantly maintained in an efficient state while the parts required to be fenced are in motion or use for the purpose of any manufacturing process (*o*).

A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act (*p*).

6. Where an inspector (*q*) considers that in a factory any part of the machinery (*r*) of any kind moved by steam, water, or other mechanical power, to which the foregoing provisions of this Act, with respect to the fencing of machinery do not apply, is not securely fenced, and is so

was under repair. Its fencing was removed, and the machines driven by it were at rest. The machines in the other rooms were at work. The owner of the factory not liable for an accident to a girl by the unfenced shaft. "The 21st section only requires it to be so (fenced) when in motion for a manufacturing process.") *Schofield* v. *Schunk* (1855), 24 L. T. 253. (Not enough that the machinery was fenced in the ordinary manner, used and approved as sufficient at the best regulated factory in the district.) *Doel* v. *Sheppard* (1856), 5 E. & B. 856; 25 L. J. Q. B. 124. (Held a bad plea that a shaft was not near to where children, young persons, or women, were likely to or liable to pass, and that the shaft was at such a distance or height that there was no danger.) *Murdock* v. *Glasgow and South-Western Ry. Co.* (1870), 8 Macp. 768. (Held to be sufficient that the fencing was according to the best method of fencing known at the time.)

(*m*) *Britton* v. *Great Western Cotton Co.*, see note (*k*). (The edge of a wheel-race must be fenced, though it was where it could be reached only by crossing a fence, and climbing through the spokes of a fly-wheel, and where children, or young persons were not liable to pass.)

(*n*) For definition, see s. 96.

(*o*) See *Coe* v. *Platt*.

(*p*) See ss. 81 and 82. The statutory penalty does not take away from the injured party the right of action. *Caswell* v. *Worth* (1856), 5 E. & B. 849; 25 L. J. Q. B. 121; 2 Jur. N. S. 116; *Couch* v. *Steel* (1854), 3 E. & B. 402; 23 L. T. Q. B. 402. With respect to the defence of negligence on the part of a workman, *Caswell* v. *Worth*. (Action against defendant for not sufficiently fencing a shaft while in motion, in compliance with 7 & 8 Vict. c. 15, s. 21; plea, admitting that the shaft was not sufficiently fenced, but that plaintiff, contrary to the express commands of defendant, and knowing that it was dangerous to meddle with the shaft, took hold of it; a good plea.) *McCracken* v. *Dargan*, 1 Irish Jur. N. S. 404. (Action by operative against owner for not sufficiently fencing shaft; plea that it was the duty of A., the operative, to put a certain belt upon one of the drums attached to the shaft; that it was a known rule of the factory not to put a belt on by hand, but by a crutch provided for the purpose; and that the plaintiff, in violation of this rule and of commands, put the belt on by hand, whereby he was injured; a good plea.) *Holmes* v. *Clarke*, 6 H. & N. 349; *Britton* v. *Great Western Cotton Co.*; and *Gibb* v. *Crombie* (1875), 2 R. 886, where it was alleged the plaintiff had made a misrepresentation as to his age.

(*q*) See s. 67.

(*r*) See sub-s. 6.

dangerous as to be likely to cause bodily injury to any person employed in the factory, the following provisions shall apply to the fencing of such machinery :

(1.) The inspector shall serve on the occupier of the factory a notice requiring him to fence the part of the machinery which the inspector so deems to be dangerous :

(2.) The occupier, within seven days after the receipt of the notice, may serve on the inspector a requisition to refer the matter to arbitration ; and thereupon the matter shall be referred to arbitration, and two skilled arbitrators shall be appointed, the one by the inspector and the other by the occupier, and the provisions of the Companies Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration shall, subject to the express provisions of this section, apply to the said arbitration, and the arbitrators or their umpire shall give the decision within twenty-one days after the last of the arbitrators, or, in the case of the umpire, after the umpire is appointed, or within such further time as the occupier and inspector, by writing, allow ; and if the decision is not so given the matter shall be referred to the arbitration of an umpire to be appointed by the judge of the county court within the jurisdiction of which the factory is situate :

(3.) If the arbitrators or their umpire decide that it is unnecessary or impossible to fence the machinery alleged in the notice to be dangerous, the notice shall be cancelled, and the occupier shall not be required to fence in pursuance thereof, and the expenses of the arbitration shall be paid as the expenses of the inspectors under this Act :

(4.) If the occupier does not, within the said seven days, serve on the inspector a requisition to refer the matter to arbitration or does not appoint an arbitrator within seven days after he served that requisition, or if neither the arbitrators nor the umpire decide that it is unnecessary or impossible to fence the machinery alleged in the notice to be dangerous, the occupier shall securely fence the said machinery in accordance with the notice, or with the award of the arbitrators or umpire if it modifies the notice, and the expenses of the arbitration shall be paid by the occupier, and shall be recoverable from him by the inspector in the county court :

(5.) Where the occupier of a factory fails to comply within a reasonable time with the requirements of this section as to securely fencing the said machinery in accordance with the notice or award, or fails to keep the said machinery securely fenced in accordance therewith, or fails constantly to maintain such fencing in an efficient state while the machinery

required to be fenced is in motion for the purpose of any manufacturing process, the factory shall be deemed not to be kept in conformity with this Act :

(6.) For the purpose of this section and of any provisions of this Act relating thereto, "machinery" shall be deemed to include any driving strap or band.

7. Where an inspector considers that in a factory or workshop a vat, pan, or other structure, which is used in the process or handicraft carried on in such factory or workshop, and near to or over which children or young persons are liable to pass or to be employed, is so dangerous, by reason of its being filled with hot liquid or molten metal or otherwise, as to be likely to be a cause of bodily injury to any child or young person employed in the factory or workshop, he shall serve on the occupier of the factory or workshop a notice requiring him to fence such vat, pan, or other structure.

The provisions of this Act with respect to the fencing of machinery which an inspector considers not to be securely fenced and to be dangerous shall apply in like manner as if they were re-enacted in this section, with the substitution of the vat, pan, or other structure, for machinery, and with the addition of workshop, and if the occupier of a factory or workshop fails constantly to maintain the fencing required under this section in an efficient state, while such vat, pan, or other structure is so filled or otherwise dangerous as aforesaid, the factory or workshop shall be deemed not to be kept in conformity with this Act.

8. Where an inspector observes in a factory that any grindstone worked by steam, water, or other mechanical power is in itself so faulty, or is fixed in so faulty a manner as to be likely to cause bodily injury to the grinder using the same, he shall serve on the occupier of the factory a notice requiring him to replace such faulty grindstone, or to properly fix the grindstone fixed in the faulty manner.

The provisions of this Act with respect to the fencing of machinery which an inspector considers not to be securely fenced and to be dangerous shall apply in like manner as if they were re-enacted in this section with the necessary modifications.

Where the occupier of a factory fails to keep the grindstone mentioned in the notice or award in such a state and fixed in such manner as not to be dangerous, the factory shall be deemed not to be kept in conformity with this Act.

9. A child (*s*) shall not be allowed to clean any part of the machinery in a factory while the same is in motion by the aid of steam, water, or other mechanical power.

A young person or woman (*t*) shall not be allowed to clean such part

(*s*) Sec. 96. (*t*) Sec. 96.

of the machinery in a factory as is mill-gearing (*u*) while the same is in motion for the purpose of propelling any part of the manufacturing machinery.

A child, young person, or woman shall not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power.

A child, young person, or woman allowed to clean or to work in contravention of this section shall be deemed to be employed contrary to the provisions of this Act (*x*).

(3.) *Employment and Meal Hours.*

10. A child, young person, or woman shall not be employed in a factory or a workshop except during the period of employment hereinafter mentioned (*y*).

11. With respect to the employment of young persons and women in a textile factory (*z*) the following regulations shall be observed :

(1.) The period of exployment, except on Saturday, shall either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening ; and

(2.) The period of employment on Saturday shall begin either at six o'clock or at seven o'clock in the morning ; and

(3.) Where the period of employment on Saturday begins at six o'clock in the morning, that period—

(*a.*) If not less than one hour is allowed for meals, shall end at one o'clock in the afternoon as regards employment in any manufacturing process, and at half-past one o'clock in the afternoon as regards employment for any purpose whatever ; and

(*b.*) If less than one hour is allowed for meals, shall end at half an hour after noon, as regards employment in any manufacturing process, and at one o'clock in the afternoon as regards employment for any purpose whatever ; and

(4.) Where the period of employment on Saturday begins at seven

(*u*) See s. 96.

(*x*) Sec. 81.

(*y*) Employment of young persons and women in a textile factory, s. 11 ; of children in a textile factory, s. 12 ; of young persons and women in a non-textile factory, or of young persons in a workshop, s. 13 ; of children in a non-textile factory and a workshop, s. 14 ; of women in workshops, s. 15 ; of children or young persons in domestic workshops, s. 16 ; of employment on Saturday, s. 18 ; prohibition of employment of children under ten, s. 20 ; employment on Sunday, s. 21 ; holidays, s. 22 ; special exemptions as to periods of employment, ss. 42—51 ; overtime, ss. 53—57 ; nightwork, ss. 58—60. As to meaning of "employment," see note to sec. 93.

(*z*) Sec. 93, as to definition.

o'clock in the morning, that period shall end at half-past one o'clock in the afternoon as regards any manufacturing process and at two o'clock in the afternoon as regards employment for any purpose whatever ; and

(5.) There shall be allowed for meals (*a*) during the said period of employment in the factory—

(*a.*) on every day except Saturday not less than two hours, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon ; and

(*b.*) on Saturday not less than half an hour ; and

(6.) A young person or woman shall not be employed continuously (*b*) for more than four hours and a half, without an interval of at least half-an-hour for a meal.

12. With respect to the employment of children in a textile factory the following regulations (*c*) shall be observed—

(1.) Children shall not be employed except on the system either of employment in morning and afternoon sets, or of employment on alternate days only ; and

(2.) The period of employment for a child in a morning set shall, except on Saturday, begin at the same hour as if the child were a young person, and end at one o'clock in the afternoon, or, if the dinner time begins before one o'clock, at the beginning of dinner time ; and

(3.) The period of employment for a child in an afternoon set shall, except on Saturday, begin at one o'clock in the afternoon, or at any later hour at which the dinner time terminates, and end at the same hour as if the child were a young person ; and

(4.) The period of employment for any child on Saturday shall begin and end at the same hour as if the child were a young person ; and

(5.) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on two successive Saturdays, nor on Saturday in any week if on any other day in the same week (*d*) his period of employment has exceeded five hours and a half ; and

(6.) When a child is employed on the alternate day system the period of employment for such child and the time allowed for meals shall be the same as if the child were a young person, but the child shall not be employed on two successive

(*a*) Secs. 52 and 19.
(*b*) Sec. 48.
(*c*) Sec. 19.
(*d*) Sec. 96.

days, and shall not be employed on the same day of the week in two successive weeks ; and

(7.) A child shall not on either system be employed continuously for any longer period than he could be if he were a young person without an interval of at least half-an-hour for a meal.

13. With respect to the employment of young persons and women in a non-textile factory (*e*), and of young persons in a workship (*f*), the following regulations shall be observed :

(1.) The period of employment, except on Saturday (*g*), shall (save as is in this Act specially excepted) (*h*) either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening ; and

(2.) The period of employment on Saturday shall (save as is in this Act specially excepted) begin at six o'clock in the morning or at seven o'clock in the morning, and end at two o'clock in the afternoon ; and

(3.) There shall be allowed for meals during the said period (*i*) of employment in the factory or workshop—

(*a.*) on every day except Saturday not less than one hour and a half, which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon ; and

(*b.*) on Saturday not less than half-an-hour ; and

(4.) A young person or a woman in a non-textile factory and a young person in a workshop shall not be employed continuously for more than five hours without an interval of at least half-an-hour for a meal.

14. With respect to the employment of children in a non-textile factory and a workshop the following regulations shall be observed :

(1.) Children shall not be employed except either on the system of employment in morning and afternoon sets, or (in a factory or workshop in which not less than two hours are allowed for meals on every day except Saturday) on the system of employment on alternate days only ; and

(2.) The period of employment for a child in a morning set on every day, including Saturday, shall begin at six or seven o'clock in the morning and end at one o'clock in the afternoon, or, if the dinner time begins before one o'clock, at the beginning of dinner time ; and

(3.) The period of employment for a child in an afternoon set on every day, including Saturday, shall begin at one o'clock in the afternoon, or at any hour later than half-past twelve

(*e*) Sec. 93.
(*f*) Sec. 93.
(*g*) Sec. 18.
(*h*) Sec. 43.
(*i*) Secs. 52 and 61.

o'clock at which the dinner time terminates, and end on Saturday at two o'clock in the afternoon, and on any other day at six or seven o'clock in the evening, according as the period of employment for children in the morning set began at six or seven o'clock in the morning ; and

(4.) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on Saturday in any week in the same set in which he has been employed on any other day of the same week ; and

(5.) When a child is employed on the alternate day system—

(*a.*) The period of employment for such child shall, except on Saturday, either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening ; and

(*b.*) The period of employment for such child shall on Saturday begin at six or seven o'clock in the morning, and end at two o'clock in the afternoon ; and

(*c.*) There shall be allowed to such child for meals during the said period of employment not less, on any day except Saturday, than two hours, and on Saturday than half an hour ; but

(*d.*) The child shall not be employed in any manner on two successive days, and shall not be employed on the same day of the week in two successive weeks ; and

(6.) A child shall not on either system be employed continuously for more than five hours without an interval of at least half an hour for a meal.

15. With respect to the employment of women in workshops, the following regulations shall be observed :

(1.) In a workshop which is conducted on the system of employing therein children and young persons, or either of them, a woman shall not be employed except during the same period and subject to the same restrictions as if she were a young person ; and the regulations of this Act with respect to the employment of young persons in a workshop shall apply accordingly to the employment of women in that workshop ; and

(2.) In a workshop which is conducted on the system of not employing therein either children or young persons—

(*a.*) The period of employment for a woman shall, except on Saturday, begin at six o'clock in the morning and end at nine o'clock in the evening, and shall on Saturday begin at six o'clock in the morning, and end at four o'clock in the afternoon ; and

(*b.*) There shall be allowed to a woman for meals and absence from work during the period of employment not less, except on Saturday, than four hours and a half, and on Saturday than two hours and a half.

A workshop shall not be deemed to be conducted on the system of not employing therein either children or young persons until the occupier has served on an inspector notice of his intention to conduct his workshop on that system.

16. Where persons are employed at home (*k*), that is to say, in a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process carried on there, and in which the only persons employed are members of the same family dwelling there, the foregoing regulations of this Act with respect to the employment of children, young persons, and women shall not apply to such factory or workshop, and in lieu thereof the following regulations shall be observed therein :

(1.) A child or young person shall not be employed in the factory or workshop except during the period of employment hereinafter mentioned ; and

(2.) The period of employment for a young person shall, except on Saturday, begin at six o'clock in the morning and end at nine o'clock in the evening, and shall on Saturday begin at six o'clock in the morning and end at four o'clock in the afternoon ; and

(3.) There shall be allowed to every young person for meals and absence from work during the period of employment not less, except on Saturday, than four hours and a half, and on Saturday than two hours and a half ; and

(4.) The period of employment for a child on every day either shall begin at six o'clock in the morning and end at one o'clock in the afternoon, or shall begin at one o'clock in the afternoon and end at eight o'clock in the evening or on Saturday at four o'clock in the afternoon ; and for the purpose of the provisions of this Act respecting education, such child shall be deemed, according to circumstances, to be employed in a morning or afternoon set ; and

(5.) A child shall not be employed before the hour of one in the afternoon in two successive periods of seven days, nor after that hour in two successive periods of seven days, and a child shall not be employed on Saturday in any week before the hour of one in the afternoon, if on any other day in the same week he has been employed before that hour, nor after that

(*k*) Sec. 98.

hour if on any other day of the same week he has been employed after that hour ; and

(6.) A child shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.

17. With respect to meals the following regulations (*l*) shall (save as is in this Act specially excepted) be observed in a factory and workshop :

(1.) All children, young persons, and women employed therein shall have the times allowed for meals at the same hour of the day ; and

(2.) A child, young person, or woman shall not during any part of the times allowed for meals in the factory or workshop, be employed in the factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is then being carried on.

18. The period of employment on Saturday for a young person or woman in a non-textile factory or workshop may be of the same length as on any other day if the period of employment of such young person or woman has not exceeded eight hours on any day of the same week, and if notice has been affixed in the factory or workshop and served on the inspector.

19. The occupier of a factory or workshop may from time to time fix within the limits allowed by this Act, and shall (save as is in this Act specially excepted) specify in a notice affixed in the factory or workshop, the period of employment, the times allowed for meals, and whether the children are employed on the system of morning and afternoon sets or of alternate days.

The period of employment and the times allowed for meals in the factory or workshop shall be deemed to be the period and times specified in the notice affixed in the factory or workshop ; and all the children in the factory or workshop shall be employed either on the system of morning and afternoon sets or on the system of alternate days according to the system for the time being specified in such notice :

Provided that a change in such period or times or system of employment shall not be made until after the occupier has served on an inspector and affixed in the factory or workshop notice of his intention to make such change, and shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

20. A child under the age of ten years shall not be employed in a factory or a workshop.

21. A child, young person, or woman shall not (save as is in this Act specially excepted) be employed on Sunday in a factory or workshop (*m*).

(*l*) Sec. 52. (*m*) Sec. 51.

(4.) *Holidays.*

22. The occupier of a factory or of a workshop shall (save as is in this Act specially excepted) (*n*) allow to every child, young person, and woman employed therein the following holidays; that is to say,

(1.) The whole of Christmas Day and the whole either of Good Friday or, if it is so specified by the occupier in the notice affixed in the factory or workshop, of the next public holiday under the Holidays Extension Act, 1875; and in addition

(2.) Eight half holidays in every year, but a whole holiday may be allowed in lieu of any two such half holidays; and

(3.) At least half of the said half holidays or whole holidays shall be allowed between the fifteenth day of March and the first day of October in every year; and

(4.) Cessation from work shall not be deemed to be a half holiday or whole holiday, unless a notice of the half holiday or whole holiday has been affixed in the factory or workshop for at least the whole period of employment of young persons and women on the last previous work day but one; and

(5.) A half holiday shall comprise at least one half of the period of employment for young persons and women on some day other than Saturday.

A child, young person, or woman who—

(*a.*) on a whole holiday fixed by or in pursuance of this section for a factory or workshop is employed in the factory or workshop, or

(*b.*) on a half holiday fixed in pursuance of this section for a factory or workshop is employed in the factory or workshop during the portion of the period of employment assigned for such half holiday,

shall be deemed to be employed contrary to the provisions of this Act.

If in a factory or workshop such whole holidays or half holidays as required by this section are not fixed in conformity therewith, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(5.) *Education of Children.*

23. The parent (*o*) of a child employed in a factory or in a workshop shall cause that child to attend some recognised efficient school (*p*) (which school may be selected by such parent), as follows:

(1.) The child, when employed in a morning or afternoon set, shall in every week, during any part of which he is so employed

(*n*) Secs. 49, 50, 61, sub-s. 4.
(*o*) Sec. 96.
(*p*) Sec. 95.

be caused to attend on each work day for at least one attendance ; and

(2.) The child, when employed on the alternate day system, shall on each work day preceding each day of employment in the factory or workshop be caused to attend for at least two attendances :

(3.) An attendance for the purposes of this section shall be an attendance as defined for the time being by a Secretary of State with the consent of the Education Department, and be between the hours of eight in the morning and six in the evening : (*q*)

Provided that—

(*a.*) A child shall not be required by this Act to attend school on Saturday or on any holiday or half holiday allowed under this Act in the factory or workshop in which the child is employed ; and

(*b.*) The non-attendance of the child shall be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, also when the school is closed during the ordinary holidays or for any other temporary cause ; and

(*c.*) Where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by an inspector under this Act, although not a recognised efficient school, shall for the purposes of this Act be deemed attendance at a recognised efficient school until such recognised efficient school as aforesaid is established, and with a view to such establishment the inspector shall immediately report to the Education Department every case of the approval of a school by him under this section.

A child who has not in any week attended school for all the attendances required by this section shall not be employed in the following week until he has attended school for the deficient number of attendances.

The Education Department shall from time to time, by the publication of lists or by notices or otherwise as they think expedient, provide for giving to all persons interested information of the schools in each school district which are recognised efficient schools.

24. The occupier of a factory or workshop in which a child is employed shall on Monday in every week (after the first week in which such child began to work therein), or on some other day appointed for

(*q*) "The attendance of a child at a morning or afternoon meeting of a school during not less than two hours of instruction in secular subjects."—Order of Home Secretary, Dec. 24, 1878.

that purpose by an inspector, obtain from the teacher of the recognised efficient school attended by the child, a certificate (according to the prescribed form and directions) respecting the attendance of such child at school in accordance with this Act.

The employment of a child without obtaining such certificate as is required by this section shall be deemed to be employment of a child contrary to the provisions of this Act (*r*).

The occupier shall keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or his workshop, and shall produce the same to an inspector when required during that period.

25. The board authority or persons who manage a recognised efficient school attended by a child employed in a factory or workshop, or some person authorised by such board, authority or person, may apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one-twelfth part of the wages of the child, and after that application the occupier, so long as he employs the child, shall be liable to pay to the applicants, while the child attends their school, the said weekly sum, and the sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child.

26. When a child of the age of thirteen years has obtained from a person authorised by the Education Department a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a certified efficient school, as hereinafter mentioned, that child shall be deemed to be a young person for the purposes of this Act.

The standards of proficiency and due attendance for the purposes of this section shall be such as may be from time to time fixed for the purposes of this Act by a Secretary of State, with the consent of the Education Department, and the standards so fixed shall be published in the London Gazette, and shall not have effect until the expiration of at least six months after such publication.

Attendance at a certified day industrial school shall be deemed for the purposes of this section to be attendance at a certified efficient school (*s*).

(6.) *Certificates of Fitness for Employment.*

27. In a factory (*t*) a child or a young person under the age of sixteen years shall not be employed for more than seven, or if the certifying surgeon for the district resides more than three miles from the factory thirteen, work days, unless the occupier of the factory has ob-

(*r*) Sec. 83.

(*s*) Sec. 95; Order of Home Secretary, Feb. 15, 1879.

(*t*) Secs. 41 and 73.

tained a certificate, in the prescribed form, of the fitness of such child or young person for employment in that factory.

A certificate of fitness for employment for the purposes of this Act shall be granted by the certifying surgeon (*u*) for the district, and shall be to the effect that he is satisfied, by the production of a certificate of birth or other sufficient evidence, that the person named in the certificate of fitness is of the age therein specified, and has been personally examined by him, and is not incapacitated by disease or bodily infirmity for working daily for the time allowed by law in the factory named in the certificate (*x*).

28. In order to enable occupiers of workshops to better secure the observance of this Act, and prevent the employment in their workshops of children and young persons under the age of sixteen years who are unfitted for that employment, an occupier of a workshop is hereby authorised to obtain, if he thinks fit, from the certifying surgeon for the district, certificates of the fitness of children and of young persons under the age of sixteen years for employment in his workshop, in like manner as if that workshop were a factory, and the certifying surgeon shall examine the children and young persons, and grant certificates accordingly.

29. Where an inspector is of opinion that a child or a young person under the age of sixteen years is by disease or bodily infirmity incapacitated for working daily for the time allowed by law in the factory or workshop in which he is employed, he may serve written notice thereof on the occupier of the factory or workshop, requiring that the employment of such child or young person be discontinued from the period named therein, not being less than one nor more than seven days after the service of such notice, and the occupier shall not continue after the period named in such notice to employ such child or young person (notwithstanding a certificate of fitness has been previously obtained for such child or young person), unless the certifying surgeon for the district has, after the service of the notice, personally examined such child or young person, and has certified that such child or young person is not so incapacitated as aforesaid.

30. All factories and workshops in the occupation of the same occupier, and in the district of the same certifying surgeon, or any of them, may be named in the certificate of fitness for employment, if the surgeon is of opinion that he can truly give the certificate for employment therein.

The certificate of birth (which may be produced to a certifying surgeon) shall either be a certified copy of the entry in the register of births, kept in pursuance of the Acts relating to the registration of births (*y*), of the birth of the child or young person (whether such copy be

(*u*) Secs. 71 and 72.
(*x*) Sec. 73 ; as to age, s. 92.
(*y*) 37 & 38 Vict. c. 88.

obtained in pursuance of the Elementary Education Act, 1876, or otherwise), or be a certificate from a local authority within the meaning of the Elementary Education Act, 1876, to the effect that it appears from the returns transmitted to such authority in pursuance of the said Act by the registrar of births and deaths that the child was born at the date named in the certificate.

Where a certificate of fitness for employment is to the effect that the certifying surgeon has been satisfied of the age of a child or young person by evidence other than the production of a certificate of birth, an inspector may, by notice in writing, annul the surgeon's certificate, if he has reasonable cause to believe that the real age of the child or young person named in it is less than that mentioned in the certificate, and thereupon that certificate shall be of no avail for the purposes of this Act.

When a child becomes a young person, a fresh certificate of fitness must be obtained.

The occupier shall, when required, produce to an inspector at the factory or workshop in which a child or young person is employed the certificate of fitness of such child or young person for employment, which he is required to obtain under this Act.

(7.) *Accidents* (*z*).

31. Where there occurs in a factory or a workshop any accident which either—

(*a*.) causes loss of life to a person employed in the factory or in the workshop, or

(*b*.) causes bodily injury to a person employed in the factory or in the workshop, and is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with hot liquid or molten metal or other substance, or by explosion, or by escape of gas, steam, or metal, and is of such a nature as to prevent the person injured by it from returning (*a*) to his work in the factory or workshop within forty-eight hours after the occurrence of the accident,

written notice of the accident shall forthwith be sent to the inspector and to the certifying surgeon for the district, stating the residence of the

(*z*) Sec. 61, as to exception.

(*a*) Every accident need not be reported; but if a person injured returns with the intention, but not the ability, to work, his case will not be outside the section. *Lakeman* v. *Stephenson* (1868), L. R. 3 Q. B. 192; 37 L. J. M. C. 57; 9 B. & S. 54; 16 W. R. 509; 17 L. T. N. S. 539. A case decided under the 7 Vict. c. 15; "The true meaning of section 22 (7 Vict. c. 15), is, that the accident must be reported, unless the person injured is not only able to return to the factory, but is in a condition to do his ordinary work as usual."—Cockburn, C.J.

person killed or injured, or the place to which he may have been removed, and if any such notice is not sent the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

If any such accident as aforesaid occurs to a person employed in an iron mill or blast furnace, or other factory or workshop where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

A notice of an accident, of which notice is required by section sixty-three of the Explosives Act, 1875, to be sent to a government inspector, need not be sent to the certifying surgeon in pursuance of this section.

32. Where a certifying surgeon receives in pursuance of this Act notice of an accident in a factory or a workshop, he shall with the least possible delay proceed to the factory or workshop, and make a full investigation as to the nature and cause of the death or injury caused by that accident, and within the next twenty-four hours send to the inspector a report thereof.

The certifying surgeon, for the purpose only of an investigation under this section, shall have the same powers as an inspector (*b*), and shall also have power to enter any room in a building to which the person killed or injured has been removed.

There shall be paid to the said surgeon for the investigation such fee, not exceeding ten nor less than three shillings, as a Secretary of State considers reasonable, which fee shall be paid as expenses incurred by a Secretary of State in the execution of this Act.

PART II.

Special Provisions relating to particular Classes of Factories and Workshops.

(1.) *Special Provisions for Health in certain Factories and Workshops.*

33. For the purpose of securing the observance of the requirements of this Act as to cleanliness (*c*) in every factory and workshop, all the inside walls of the rooms of a factory or workshop, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of a factory or workshop, if they have not been painted with oil or varnished once at least within seven years, shall be limewashed once at least within every fourteen months, to date from the period when last limewashed; and if they have been so painted or varnished, shall be washed with hot water and

(*b*) Sec. 68, as to powers of inspectors. (*c*) Sec. 3.

soap once at least within every fourteen months, to date from the period when last washed.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act (*d*).

Where it appears to a Secretary of State that in any class of factories or workshops, or parts thereof, the regulations in this section are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by order made under this part of this Act, grant to such class of factories or workshops, or parts thereof, a special exception that the regulations in this section shall not apply thereto (*e*).

34. Where a bakehouse (*ee*) is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons, all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of such bakehouse, shall either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed ; where painted with oil or varnished there shall be three coats of paint or varnish, and the paint or varnish shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months ; where limewashed the limewashing shall be renewed once at least in every six months.

A bakehouse in which there is any contravention of this section shall be deemed not to be kept in conformity with this Act.

35. Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons, a place on the same level with the bakehouse, and forming part of the same building, shall not be used as a sleeping place, unless it is constructed as follows ; that is to say,

unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling ; and

unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

Any person who lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for every subsequent offence five pounds.

36. If in a factory or workshop where grinding, glazing, or polishing on a wheel, or any process is carried on, by which dust is generated and

(*d*) Sec. 81.

(*e*) Order of Home Secretary, March 17, 1880.

(*ee*) 4th Schedule (22).

inhaled by the workers to an injurious extent (*f*), it appears to an inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may direct a fan or other mechanical means of a proper construction for preventing such inhalation to be provided within a reasonable time; and if the same is not provided, maintained, and used, the factory or workshop shall be deemed not to be kept in conformity with this Act.

37. A child, young person, or woman shall not be employed in any part of a factory in which wet-spinning is carried on, unless sufficient means be employed and continued for protecting the workers from being wetted, and, where hot water is used, for preventing the escape of steam into the room occupied by the workers.

A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(2.) *Special Restrictions as to Employment, Meals, and Certificates of Fitness.*

38. A child or young person shall not, to the extent mentioned in the First Schedule to this Act, be employed in the factories or workshops or parts thereof named in that schedule.

Notice of the prohibition in this section shall be affixed in a factory or workshop to which it applies (*g*).

39. A child, young person, or woman shall not be allowed to take a meal or to remain during the times allowed for meals (*h*) in the parts of factories or workshops to which this section applies; and a child, young person, or woman allowed to take a meal or to remain in contravention of this section shall be deemed to be employed contrary to the provisions of this Act.

Notice of the prohibition in this section shall be affixed in a factory or workshop to which it applies.

This section applies to the parts of factories or workshops named in the Second Schedule to this Act.

Where it appears to a Secretary of State that by reason of the nature of the process in any class of factories or workshops or parts thereof not named in the said schedule, the taking of meals therein is specially injurious to health, he may, if he thinks fit, by order made under this part of this Act extend the prohibition in this section to the said class of factories or workshops or parts thereof (*hh*).

If the prohibition in this section is proved to the satisfaction of a Secretary of State to be no longer necessary for the protection of the health of children, young persons, and women in any class of factories or workshops or parts thereof to which the prohibition has been extended

(*f*) Sec. 3.
(*g*) Sec. 61.
(*h*) Secs. 16 and 17.
(*hh*) Order of Home Secretary, Jan. 10, 1881; Order of Jan. 29, 1880.

by an order, he may, by an order made under this part of this Act, rescind the order of extension, without prejudice nevertheless to the subsequent making of another order.

40. In print works and bleaching and dyeing works (*i*) the period of employment for a child, young person, and woman, and the times allowed for meals, shall be the same as if the said works were a textile factory, and the regulations of this Act with respect to the employment of children, young persons, and women in a textile factory shall apply accordingly, as if print works and bleaching and dyeing works were textile factories; save that nothing in this section shall prevent the continuous employment of a child, young person, or woman in the said works without an interval of half an hour for a meal, for the period allowed by this Act in a non-textile factory.

41. Where it appears to a Secretary of State that by reason of special circumstances affecting any class of workshops it is expedient for protecting the health of the children and of the young persons under the age of sixteen years employed therein, to extend thereto the prohibition in this section mentioned, he may, by order made under this part of this Act, extend to such class of workshops the prohibition in this Act of the employment of children and young persons under the age of sixteen years without a certificate of the fitness (*k*) of such child or young person for employment, and thereupon the provisions of this Act with respect to certificates of fitness for employment shall apply to the class of workshops named in the order in like manner as if they were factories.

If the prohibition is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of the children and the young persons under the age of sixteen years employed in any class of workshops to which it has been extended under this section, he may by order made under this part of this Act rescind the order of extension, without prejudice nevertheless to the subsequent making of another order.

(3.) *Special Exceptions relaxing General Law in certain Factories and Workshops* (*l*).

(a) *Period of Employment.*

42. In the factories and workshops or parts thereof to which this exception applies the period of employment for young persons and women, if so fixed by the occupier and specified in the notice, may, except on Saturday, begin at eight o'clock in the morning and end at eight o'clock in the evening, and on Saturday may begin at eight o'clock in the

(*i*) As to period of employment, sections 11 and 12; as to print, bleaching, and dyeing works, sec. 93 and 4th Schedule, Part I.

(*k*) Secs. 27 to 30.

(*l*) Provision as to occupier availing himself of special exceptions, s. 66.

morning and end at four o'clock in the afternoon, or where it begins at seven o'clock in the morning may end at three o'clock in the afternoon ; and the period of employment for a child in a morning set may begin at the same hour, and the period of employment for a child in an afternoon set may end at the same hour.

This exception applies to the factories and workshops and parts thereof specified in Part One of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops or parts thereof, either generally or when situate in any particular locality, require the extension thereto of this exception, and that the extension can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act extend this exception accordingly (*m*).

43. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops or parts thereof, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, and that such grant can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act grant to such class of factories or workshops or parts thereof a special exception, that the period of employment for young persons and women therein, if so fixed by the occupier and specified in the notice, may on any day except Saturday begin at nine o'clock in the morning and end at nine o'clock in the evening, and in such case the period of employment for a child in a morning set shall begin at nine o'clock in the morning, and the period of employment for a child in an afternoon set shall end at eight o'clock in the evening (*n*).

44. The regulations of this Act with respect to the employment of young persons in textile factories shall not prevent the employment, in the part of a textile factory in which a machine for the manufacture of lace is moved by steam, water, or other mechanical power, of any male young person above the age of sixteen years between four o'clock in the morning and ten o'clock in the evening, if he is employed in accordance with the following conditions ; namely,

(*a.*) Where such young person is employed on any day before the beginning or after the end of the ordinary period of employment in the factory, there shall be allowed him for meals and absence from work between the above-mentioned hours of four in the morning and ten in the evening not less than nine hours ; and

(*m*) Order of Home Secretary, June 3, 1881 ; Order of April 11, 1881.

(*n*) Order of Home Secretary, Dec. 21, 1881 ; Order of July 12, 1880.

(*b.*) Where such young person is employed on any day before the beginning of the ordinary period of employment in the factory, he shall not be employed on the same day after the end of that period ; and

(*c.*) Where such young person is employed on any day after the end of the ordinary period of employment in the factory, he shall not be employed next morning before the beginning of the ordinary period of employment.

For the purpose of this exception the ordinary period of employment in the factory means the period of employment for young persons under the age of sixteen years or women in the factory, or if none are employed means such period as can under this Act be fixed for the employment of such young persons and women in the factory, and notice of such period shall be affixed in the factory.

45. The regulations of this Act with respect to the employment of young persons in non-textile factories or workshops (*o*) shall not prevent the employment, in the part of a bakehouse in which the process of baking bread is carried on, of any male young person above the age of sixteen years between five o'clock in the morning and nine o'clock in the evening, if he is employed in accordance with the following conditions ; namely,

(*a.*) Where such young person is employed on any day before the beginning or after the end of the ordinary period of employment in the bakehouse, there shall be allowed him for meals and absence from work between the above-mentioned hours of five in the morning and nine in the evening not less than seven hours ; and

(*b.*) Where such young person is employed on any day before the beginning of the ordinary period of employment in the bakehouse, he shall not be employed after the end of that period on the same day ; and

(*c.*) Where such young person is employed on any day after the end of the ordinary period of employment in the bakehouse, he shall not be employed next morning before the beginning of the ordinary period of employment.

For the purpose of this exception the ordinary period of employment in the bakehouse means the period of employment for young persons under the age of sixteen years or women in the bakehouse, or if none are employed, means such period as can under this Act be fixed for the employment of such young persons and women in the bakehouse, and notice of such period shall be affixed in the bakehouse.

Where it is proved to the satisfaction of a Secretary of State that the exigencies of the trade carried on in bakehouses, either generally or

(*o*) Sec. 13 ; also *Cameron* v. *Foy* (1874), 30 L. T. N. S. 517, under 30 & 31 Vict. c. 146, as to substituting a Wednesday half holiday for Saturday.

when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, and that such grant can be made without injury to the health of the male young persons affected thereby, he may by order made under this part of this Act grant to bakehouses, or to bakehouses situate in the said locality, a special exception permitting the employment of male young persons of sixteen years of age and upwards as if they were no longer young persons (*p*).

46. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require some other day in the week to be substituted for Saturday as regards the hour at which the period of employment for children, young persons, and women is required by this Act to end on Saturday (*q*), he may by order (*r*) made under this part of this Act grant to such class of factories or workshops a special exception, authorising the occupier of every such factory and workshop to substitute by a notice affixed in his factory or workshop some other day for Saturday, and in such case this Act shall apply in such factory or workshop in like manner as if the substituted day were Saturday, and Saturday were an ordinary work day.

47. In the process of Turkey red dyeing, nothing in Part One of this Act shall prevent the employment of young persons and women on Saturday until half-past four o'clock in the afternoon, but the additional number of hours so worked shall be computed as part of the week's limit of work, which shall in no case be exceeded.

48. In any of the textile factories to which this exception applies, if the period of employment for young persons and women, as fixed by the occupier and specified in the notice, begins at the hour of seven in the morning, and the whole time between that hour and eight o'clock is allowed for meals, the regulations of this Act with respect to the employment of children, young persons, and women shall not prevent a child, young person, or woman, between the first day of November and the last day of March next following, being employed continuously, without an interval of at least half-an-hour for a meal, for the same period as if the factory were a non-textile factory (*s*).

This exception applies to the textile factories specified in Part Seven of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of textile factories, either generally or when situate in any particular locality, the customary habits of the persons employed therein require the extension thereto of this exception, and that the manufacturing process carried on therein is of a healthy character, and the

(*p*) Order of Home Secretary, 10th Dec., 1878.

(*q*) Secs. 12, 13, 14, and 16.

(*r*) Home Secretary's Order, 10th Dec., 1878; Order of August 18, 1880.

(*s*) Sec. 13.

extension can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act extend this exception accordingly (*t*).

49. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, he may by order (*u*) made under this part of this Act grant to such class of factories or workshops a special exception, authorising the occupier of any such factory or workshop to allow all or any of the half holidays, or whole holidays in lieu of them, on different days to any of the children, young persons, and women employed in his factory or workshop, or to any sets of such children, young persons, and women, and not on the same days.

50. Where the occupier of a factory or workshop is a person of the Jewish religion, the regulations of this Act with respect to the employment of young persons and women shall not prevent him—

(1.) If he keeps his factory or workshop closed on Saturday until sunset, from employing young persons and women on Saturday from after sunset until nine o'clock in the evening ; or

(2.) If he keeps his factory or workshop closed on Saturday both before and after sunset, from employing young persons and women one hour on every other day in the week (not being Sunday), in addition to the hours allowed by this Act, so that such hour be at the beginning or end of the period of employment, and be not before six o'clock in the morning or after nine o'clock in the evening ; or

(3.) If all the children, young persons, and women in his factory or workshop are of the Jewish religion, from giving them, if so specified in a notice affixed in the factory or workshop as by this Act provided (*x*), any two public holidays under the Holidays Extension Act, 1875, in lieu of Christmas Day and Good Friday, but in that case such factory or workshop shall not be open for traffic on Christmas Day or Good Friday.

51. No penalty shall be incurred by any person in respect of any work done on Sunday in a factory or workshop by a young person or woman of the Jewish religion, subject to the following conditions :

(1.) The occupier of the factory or workshop shall be of the Jewish religion ; and

(2.) The factory or workshop shall be closed on Saturday and shall not be open for traffic on Sunday ; and

(*t*) Order of Home Secretary, 10th Dec., 1878.

(*u*) Order of Home Secretary, 10th Dec., 1878.

(*x*) Sec. 19.

(3.) The occupier shall not avail himself of the exception authorising the employment of young persons and women on Saturday evening, or for an additional hour during any other day of the week.

Where the occupier avails himself of this exception, this Act shall apply to the factory or workshop in like manner as if in the provisions thereof respecting Sunday the word Saturday were substituted for Sunday, and in the provisions thereof respecting Saturday the word Sunday, or, if the occupier so specify in the notice the word Friday, were substituted for Saturday.

(b.) *Meal Hours.*

52. The provisions (*y*) of this Act which require that all the children, young persons, and women employed in a factory or workshop shall have the times allowed for meals at the same hour of the day shall not apply in the cases mentioned in Part Two of the Third Schedule to this Act.

The provisions of this Act which require that a child, young person, and woman shall not, during any part of the times allowed for meals in a factory or workshop, be employed in the factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is being carried on, shall not apply in the cases and to the extent mentioned in Part Two of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of factories or workshops or parts thereof it is necessary, by reason of the continuous nature of the process, or of special circumstances affecting such class, to extend thereto the exceptions in this section or either of them, and that such extension can be made without injury to the health of the children, young persons, and women affected thereby, he may by order (*z*) made under this part of this Act extend the same accordingly.

(c.) *Overtime.*

53. The regulations of this Act with respect to the employment of young persons and women shall not prevent the employment in the factories and workshops or parts thereof to which this exception applies of young persons and of women during a period of employment beginning at six o'clock in the morning and ending at eight o'clock in the evening, or beginning at seven o'clock in the morning and ending at nine o'clock in the evening, or beginning at eight o'clock in the morning and ending at ten o'clock in the evening, if they are employed in accordance with the following conditions ; namely,

(*y*) Sec. 17.
(*z*) Orders of Home Secretary, 10th Dec., 1878.

(1.) There shall be allowed to every such young person and woman for meals during the period of employment not less than two hours, of which half an hour shall be after five o'clock in the evening; and

(2.) Any such young person or woman shall not be so employed on the whole for more than five days in any one week, nor for more than forty-eight days in any twelve months.

This exception applies to the factories and workshops and parts thereof specified in Part Three of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the material which is the subject of the manufacturing process or handicraft therein being liable to be spoiled by the weather, or by reason of press of work arising at certain recurring seasons of the year, or by reason of the liability of the business to a sudden press of orders arising from unforeseen events, to employ young persons and women in manner authorised by this exception, and that such employment will not injure the health of the young persons and women affected thereby, he may by order (*a*) made under this part of this Act extend this exception to such factories or workshops or parts thereof.

54. If in any factory or workshop or part thereof to which this exception applies, the process in which a child, young person, or woman is employed is in an incomplete state at the end of the period of employment of such child, young person, or woman, the provisions of this Act with respect to the period of employment shall not prevent such child, young person, or woman from being employed for a further period not exceeding thirty minutes:

Provided that such further periods when added to the total number of hours of the periods of employment of such child, young person, or woman in that week, do not raise that total above the number otherwise allowed under this Act.

This exception applies to the factories and workshops specified in Part Four of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof the time for the completion of a process cannot by reason of the nature thereof be accurately fixed, and that the extension to such class of factories or workshops or parts thereof of this exception can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act extend this exception accordingly (*b*).

(*a*) Order of Home Secretary, 10th Dec., 18 80 ;Orders of August 18, 1878; Order of March 11, 1880; Order of May 14, 1879; Order of October 6, 1881; Order of June 3, 1881; Order of Jan. 5, 1881.

(*b*) Order of August 18, 1880.

55. Nothing in this Act shall prevent the employment of young persons and women so far as is necessary for the purpose only of preventing any damage which may arise from spontaneous combustion in the process of Turkey red dyeing, or from any extraordinary atmospheric influence in the process of open-air bleaching.

56. The regulations of this Act with respect to the employment of young persons and women shall not prevent the employment, in the factories and workshops and parts thereof to which this exception applies, of women during a period of employment beginning at six o'clock in the morning and ending at eight o'clock in the evening, or beginning at seven o'clock in the morning and ending at nine o'clock in the evening, if they are employed in accordance with the following conditions ; namely,

(1.) There shall be allowed to every such woman for meals during the period of employment not less than two hours, of which half an hour shall be after five o'clock in the evening ; and

(2.) Any such woman shall not be so employed on the whole for more than five days in any one week, nor for more than ninety-six days in any twelve months.

This exception applies to the factories and workshops and parts thereof specified in Part Five of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the perishable nature of the articles or materials which are the subject of the manufacturing process or handicraft, to employ women in manner authorised by this exception, and that such employment will not injure the health of the women employed, he may by order made under this part of this Act extend this exception to such factories or workshops or parts thereof.

57. Where it appears to a Secretary of State that factories driven by water power are liable to be stopped by drought or flood, he may, by order (*c*) made under this part of this Act, grant to such factories a special exception permitting the employment of young persons and women during a period of employment from six o'clock in the morning until seven o'clock in the afternoon, on such conditions as he may think proper, but so as that no person shall be deprived of the meal hours by this Act provided, nor be so employed on Saturday, and that as regards factories liable to be stopped by drought, such special exception shall not extend to more than ninety-six days in any period of twelve months, and as regards factories liable to be stopped by floods, such special exception shall not extend to more than forty-eight days in any period of twelve months. This overtime shall not extend in any case beyond the time already lost during the previous twelve months.

(*c*) Order of 10th Dec., 1878.

(d.) *Nightwork* (*d*).

58. Nothing in this Act shall prevent the employment, in factories and workshops to which this exception applies, of male young persons during the night, if they are employed in accordance with the following conditions:

(1.) The period of employment shall not exceed twelve consecutive hours, and shall begin and end at the hours specified in the notice in this Act mentioned; and

(2.) The provisions of Part One of this Act with respect to the allowance of times for meals to young persons during the period of employment shall be observed with the necessary modifications as to the hour at which the times allowed for meals are fixed; and

(3.) A male young person employed during any part of the night shall not be employed during any part of the twelve hours preceding or succeeding the period of employment; and

(4.) A male young person shall not be employed on more than six nights, or in the case of blast furnaces or paper mills seven nights, in any two weeks.

The provisions of this Act with respect to the period of employment on Saturday, and with respect to the allowance to young persons of eight half holidays in every year, or of whole holidays in lieu of them, shall not apply to a male young person employed in day and night turns in pursuance of this exception.

This exception applies to the factories and workshops specified in Part Six of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the nature of the business requiring the process to be carried on throughout the night, to employ male young persons of sixteen years of age or upwards at night, and that such employment will not injure the health of the male young persons employed, he may by order (*e*) made under this part of this Act extend this exception to such factories or workshops or parts thereof, so far as regards young persons of the age of sixteen years or upwards.

59. In a factory or workshop in which the process of printing newspapers is carried on on not more than two nights in the week, nothing in this Act shall prevent the employment of a male young person of sixteen years of age and upwards at night during not more than two nights in a week, as if he were no longer a young person.

60. In glass works nothing in this Act shall prevent any male young person from working according to the accustomed hours of the works, if he is employed in accordance with the following conditions; namely,

(*d*) As to "night," s. 96, schedule 3, part 6.

(*e*) Order of Home Secretary, 10th Dec., 1878; Order of 14th May, 1879.

(1.) The total number of hours of the periods of employment shall not exceed sixty in any one week ; and

(2.) The periods of employment for any such young person shall not exceed fourteen hours in four separate turns per week, or twelve hours in five separate turns per week, or ten hours in six separate turns per week, or any less number of hours in the accustomed number of separate turns per week, so that such number of turns do not exceed nine ; and

(3.) Such young person shall not work in any turn without an interval of time not less than one full turn ; and

(4.) There shall be allowed to such young person during each turn (so far as is practicable) the like times for meals as are required by this Act to be allowed in any other non-textile factory or workshop.

(4.) *Special Exception for Domestic and certain other Factories and Workshops.*

61. The provisions of this Act which relate—

(1.) To the cleanliness (including limewashing, painting, varnishing, and washing) or to the freedom from effluvia, or to the overcrowding, or ventilation of a factory or workshop (*f*) ; or

(2.) To all children, young persons, and women employed in a factory or workshop having the times allowed for meals at the same hour of the day, or during any part of the times allowed for meals in a factory or workshop being employed in the factory or workshop or being allowed to remain in any room (*g*) ; or

(3.) To the affixing of any notice or abstract in a factory or workshop ; or specifying any matter in the notice so affixed (*h*) ; or

(4.) To the allowance of any holidays to a child, young person, or woman (*i*) ; or

(5.) To the sending notice of accidents (*k*) ;

shall not apply—

(*a.*) Where persons are employed at home (*kk*), that is to say, to a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used, and in which the only persons employed are members of the same family dwelling there ; or

(*b.*) To a workshop which is conducted on the system of not em-

(*f*) Sec. 3 ; ss. 33—37.
(*g*) Sec. 17.
(*h*) Secs. 19, 22, sub-ss. 1, 38, 39.
(*i*) Sec. 22.
(*k*) Secs. 31, 32.
(*kk*) Sec. 16.

ploying children or young persons therein, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system.

And the provisions of this Act with respect to certificates of fitness for employment (*l*) shall apply to any such private house, room, or place as aforesaid, which by reason of the nature of the work carried on there is a factory, as if the same were a workshop within the meaning of this Act, and not a factory.

Where the occupier of a workshop has served on an inspector notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed for all the purposes of this Act to be conducted on the said system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the said system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

Nothing in this section shall exempt a bakehouse from the provisions of this Act with respect to cleanliness (including limewashing, painting, varnishing, and washing,) or to freedom from effluvia.

62. The regulations of this Act with respect to the employment of women (*m*) shall not apply to flax scutch mills which are conducted on the system of not employing either children or young persons therein, and which are worked intermittently, and for periods only which do not exceed in the whole six months in any year. A flax scutch mill shall not be deemed to be conducted on the system of not employing therein either children or young persons until the occupier has served on an inspector notice of his intention to conduct such mill on that system.

(5.) *Supplemental as to Special Provisions.*

63. Where it appears to a Secretary of State that the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of any child, young person, or woman employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act, or at night, he may by order made under this part of this Act direct that the adoption of such means or provision shall be a condition of such employment; and if it appears to a Secretary of State that the adoption of any such means or provision is no longer required, or is, having regard to all the circumstances, inexpedient, he may, by

(*l*) Secs. 27—30.
(*m*) Secs. 10, 11, 13, 15, 17, 18 21, 22, 42—49.

order made under this part of this Act, rescind the order directing such adoption without prejudice to the subsequent making of another order.

64. Where an exception has been granted or extended under this part of this Act by an order of a Secretary of State, and it appears to a Secretary of State that such exception is injurious to the health of the children, young persons, or women employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts thereof to which the said exception was so granted or extended, he may by an order made under this part of this Act rescind the grant or extension, without prejudice to the subsequent making of another order.

65. Where a Secretary of State has power to make an order under this part of this Act, the following provisions shall apply to that order :

(1.) The order shall be under the hand of the Secretary of State and shall be published in the London Gazette, and shall come into operation at the date of such publication in the London Gazette, or at any later date mentioned in the order :

(2.) The order may be temporary or permanent, conditional or unconditional, and whether extending a prohibition or exception, granting an exception, directing the adoption of any means or provisions, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly :

(3.) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the same has been so laid before such House, resolve that such order ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such order or to the making of any new order :

(4.) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the extension or grant or otherwise for making the order.

66. An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception under this part of this Act, shall serve on an inspector, and (except in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply (*n*)) affix in his factory or workshop notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed.

Before the service of such notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of such notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that such special

(*n*) Sec. 61.

exception does not apply to his factory or workshop, unless he has previously served on an inspector notice that he no longer intends to avail himself of such special exception.

The notice so served and affixed shall specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every child, young person, and woman where they differ from the ordinary hours or times.

An occupier of a factory or workshop shall enter in the prescribed register, and report to an inspector, the prescribed particulars respecting the employment of a child, young person, or woman in pursuance of an exception, but such entry and report need not be made in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply, except so far as may be from time to time prescribed by a Secretary of State.

Where the occupier of a factory or workshop avails himself of an exception under this part of this Act, and a condition for availing himself of such exception (whether specified in this part of this Act, or in an order of a Secretary of State made under this part of this Act) is not observed in that factory or workshop, then

(1.) If such condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act ; and

(2.) In any other case a child, young person, or woman employed in the factory or workshop, in alleged pursuance of the said exception, shall be deemed to be employed contrary to the provisions of this Act.

PART III.

Administration, Penalties, and Legal Proceedings.

(1.) *Inspection.*

67. A Secretary of State from time to time, with the approval of the Treasury as to numbers and salaries, may appoint such inspectors (under whatever title he may from time to time fix (*o*)) and such clerks and servants as he may think necessary for the execution of this Act, and may assign to them their duties and award them their salaries, and may constitute a principal inspector with an office in London, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors, clerks, and servants.

The salaries of the inspectors, clerks, and servants, and the expenses

(*o*) Order of Home Secretary, 24th Dec., 1878. As to powers of inspectors under former Acts, Fraser's Master and Servant, p. 626.

incurred by them or by a Secretary of State in the execution of this Act, shall be paid out of moneys provided by Parliament.

Notice of the appointment of every such inspector shall be published in the London Gazette.

A person who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about a factory or workshop, shall not act as an inspector under this Act.

An inspector under this Act shall not be liable to serve in any parochial or municipal office.

Such annual report of the proceedings of the inspectors as the Secretary of State from time to time directs shall be laid before both Houses of Parliament.

A reference in this Act to an inspector refers, unless it is otherwise expressed, to an inspector appointed in pursuance of this section, and a notice or other document required by this Act to be sent to an inspector shall be sent to such inspector as a Secretary of State from time to time directs, by declaration published in the London Gazette or otherwise as he thinks expedient for making the same known to all persons interested.

68. An inspector under this Act shall for the purpose of the execution of this Act have power to do all or any of the following things ; namely,

(1.) To enter, inspect, and examine at all reasonable times by day and night a factory and a workshop and every part thereof when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop ; and

(2.) To take with him in either case a constable into a factory in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty ; and

(3.) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same ; and

(4.) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein ; and

(5.) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated ; and

(6.) To examine either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to

believe to be or to have been within the preceding two months employed in a factory or workshop, and to require such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and

(7.) To exercise such other powers as may be necessary for carrying this Act into effect.

The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to such factory and workshop.

Every person who wilfully delays an inspector in the exercise of any power under this section, or who fails to comply with a requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or who conceals or prevents a child, young person, or woman from appearing before or being examined by an inspector, or attempts so to conceal or prevent a child, young person, or woman, shall be deemed to obstruct an inspector in the execution of his duties under this Act: Provided always, that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds; and where an inspector is so obstructed in a factory or workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night, twenty pounds; and where an inspector is so obstructed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or where the offence is committed at night, five pounds.

69. An inspector before entering, in pursuance of the powers conferred by this Act, without the consent of the occupier, any room or place actually used as a dwelling as well as for a factory or workshop, shall, on an affidavit or statutory declaration of facts and reasons, obtain written authority so to do from a Secretary of State, or such warrant as is hereinafter mentioned from a justice of the peace.

The affidavit or statutory declaration above mentioned may be inspected or produced in evidence in all respects the same as an information on oath before a justice.

A justice of the peace, if satisfied by information on oath that there is reasonable cause to suppose that any enactment of this Act is contravened in any such room or place as aforesaid, may in his discretion grant a warrant under his hand authorising the inspector named therein at any time within the period named therein, but not exceeding one month from the date thereof, to enter, in pursuance of this Act, the room or place named in the warrant, and exercise therein the powers of in-

spection and examination conferred by this Act, and the fines and provisions of this Act with respect to obstruction of an inspector shall apply accordingly.

70. Every inspector under this Act shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop shall, if required, produce to the occupier the said certificate.

Every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or personates the inspector named in any such certificate, or falsely pretends to be an inspector under this Act, shall be liable to be imprisoned for a period not exceeding three months, with or without hard labour.

(2.) *Certifying Surgeons.*

71. Where there is no certifying surgeon resident within three miles of a factory or workshop, the poor law medical officer shall be for the time being the certifying surgeon under this Act for such factory workshop.

72. Subject to such regulations as may be from time to time made by a Secretary of State, an inspector may from time to time appoint sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may from time to time revoke any such appointment.

Every appointment and revocation of appointment of a certifying surgeon may be annulled by a Secretary of State upon appeal to him for that purpose.

A surgeon who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on therein or in a patent connected therewith, shall not be a certifying surgeon for that factory or workshop.

A Secretary of State may from time to time make rules for the guidance of certifying surgeons, and for the particulars to be registered respecting their visits, and for the forms of certificates and other documents to be used by them.

73. A certificate of fitness for employment (*p*) shall not be granted for the purposes of this Act, except upon personal examination of the person named therein.

A certifying surgeon shall not examine a child or young person for the purposes of a certificate of fitness for employment, or sign any such certificate, elsewhere than at the factory or workshop where such child or young person is or is about to be employed, unless the number of children and young persons employed in that factory or workshop are less than five, or unless for some special reason allowed in writing by an inspector.

(*p*) Secs. 27—33.

If a certifying surgeon refuses to grant for any person examined by him a certificate of fitness for employment, he shall when required give in writing and sign the reasons for such refusal.

74. With respect to the fees to be paid to certifying surgeons in respect of the examination of, and grant of certificates of fitness for employment for, children and young persons in factories or workshops, the following provisions shall have effect :

(1.) The occupier may agree with the certifying surgeon as to the amount of such fees :

(2.) In the absence of any such agreement the fees shall be those named in the following scale :—

When the examination is at a factory or workshop not exceeding one mile from the surgeon's residence,	2*s.* 6*d.* for each visit and 6*d.* for each person after the first five examined at that visit.
When the examination is at a factory or workshop more than one mile from the surgeon's residence,	The above fees and an additional 6*d.* for each complete half mile over and above the mile.
When the examination is not at the factory or workshop, but at the residence of the surgeon, or at some place appointed by the surgeon for the purpose, and which place, as well as the day and hour, appointed for the purpose shall be published in the prescribed manner,	6*d.* for each person examined.

(3.) The occupier shall pay the fees on the completion of the examination, or if any certificates are granted at the time at which the surgeon signs the certificates, or at any other time directed by an inspector :

(4.) The occupier may deduct the fee or any part thereof, not exceeding in any case threepence, from the wages of the person for whom the certificate was granted :

(5.) A Secretary of State may from time to time, if he think it expedient, alter any fees fixed by this section.

(3.) *Miscellaneous.*

75. Every person shall, within one month after he begins to occupy a factory, serve on an inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires

his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the firm under which the business of the factory is to be carried on, and in default shall be liable to a fine not exceeding five pounds.

76. Where an inspector, by notice in writing, names a public clock, or some other clock open to public view, for the purpose of regulating the period of employment in a factory or workshop, the period of employment and times allowed for meals for children, young persons, and women in that factory or workshop shall be regulated by that clock, which shall be specified in the notice (*q*) affixed in the factory or workshop.

77. The occupier of every factory and workshop to which this section applies shall keep in the prescribed form and with the prescribed particulars registers of the children and young persons employed in that factory or workshop, and of their employment, and of other matters under this Act.

The occupier of a factory or workshop shall send to an inspector such extracts from any register kept in pursuance of this Act as the inspector from time to time requires for the execution of his duties under this Act.

This section applies to every factory and workshop in which a child or young person under the age of sixteen years is, for the time being, prohibited under this Act from being employed without a certificate of fitness for employment.

Where by reason of the number of children and young persons employed in a factory or workshop to which this section does not for the time being apply, or otherwise, it seems expedient to a Secretary of State so to do, he may order the occupier of that factory or workshop to keep a register under this section, with power to rescind such order, and while such order is in force this section shall apply to that factory or workshop.

In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

78. There shall be affixed at the entrance of a factory and a workshop, and in such other parts thereof as an inspector for the time being directs, and be constantly kept so affixed in the prescribed form and in such position as to be easily read by the persons employed in the factory or workshop,—

(1.) The prescribed abstract of this Act; and

(2.) A notice of the name and address of the prescribed inspector; and

(3.) A notice of the name and address of the certifying surgeon for the district; and

(4.) A notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated; and

(*q*) Secs. 61 and 78.

(5.) Every notice and document required by this Act to be affixed in the factory or workshop (*r*).

In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

79. Any notice, order, requisition, summons, and document under this Act may be in writing or print, or partly in writing and partly in print.

Any notice, order, requisition, summons, and document required or authorised to be served or sent for the purposes of this Act may be served and sent by delivering the same to or at the residence of the person on or to whom it is to be served or sent, or, where that person is the occupier of a factory or workshop, by delivering the same or a true copy thereof to his agent or to some person in such factory or workshop; and it may also be served or sent by post by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that it was properly addressed and put into the post; and where it is required to be served on or sent to the occupier of a factory or workshop, it shall be deemed to be properly addressed if addressed to the occupier of such factory or workshop at the factory or workshop, with the addition of the proper postal address, but without naming the person who is the occupier.

80. Any Act for the time being in force relating to weights and measures (*s*) shall extend to weights, measures, scales, balances, steelyards, and weighing machines used in a factory or workshop in checking or ascertaining the wages of any person employed therein, in like manner as if they were used in the sale of goods, and as if such factory or workshop were a place where goods are kept for sale, and such Act shall apply accordingly, and every inspector of, or other person authorised to inspect or examine, weights and measures, shall inspect, stamp, mark, search for, and examine the said weights and measures, scales, balances, steelyards, and weighing machines accordingly, and for that purpose shall have the same powers and duties as he has in relation to weights, measures, scales, balances, steelyards, and weighing machines used in the sale of goods.

(4.) *Fines.*

81. If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds (*t*).

(*r*) Sec. 61.

(*s*) Weights and Measures Act, 1878, 41 & 42 Vict. c. 49.

(*t*) As to recovery of fines, ss. 89, 90. See also secs. 22 31 35, 68, 77 and 78.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act; the court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

82. If any person is killed or suffers any bodily injury in consequence of the occupier of a factory having neglected to fence any machinery required by or in pursuance of this Act to be securely fenced (*x*), or having neglected to maintain such fencing, or in consequence of the occupier of a factory or workshop having neglected to fence any vat, pan, or other structure required by or in pursuance of this Act to be securely fenced, or having neglected to maintain such fencing, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds, the whole or any part of which may be applied for the benefit of the injured person or his family, or otherwise as a Secretary of State determines:

Provided that the occupier of a factory shall not be liable to a fine under this section if an information against him for not fencing the part of the machinery, or the vat, pan, or other structure, by which the death or bodily injury was inflicted, has been heard and dismissed previous to the time when the death or bodily injury was inflicted.

83. Where a child, young person, or woman is employed in a factory or workshop contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night, five pounds for each child, young person, or woman so employed; and where a child, young person, or woman is so employed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night, two pounds for each child, young person, or woman so employed.

A child, young person, or woman who is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals and absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop or allowed to remain in any room, shall be deemed to be employed contrary to the provisions of this Act.

84. The parent (*y*) of a child or young person shall,—

(1.) If such child or young person is employed in a factory or workshop contrary to the provisions of this Act, be liable to a fine not exceeding twenty shillings for each offence, unless it

(*x*) Secs. 5, 6, 7. (*y*) Sec. 96.

appears to the court that such offence was committed without the consent, connivance, or wilful default of such parent; and

(2.) If he neglects to cause such child to attend school in accordance with this Act (*z*), be liable to a fine not exceeding twenty shillings for each offence.

85. Every person who forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided), or who gives or signs any such certificate knowing the same to be false in any material particular, or who knowingly utters or makes use of any certificate so forged, counterfeited, or false as aforesaid, or who knowingly utters or makes use of as applying to any person a certificate which does not so apply or who personates any person named in a certificate, or who wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour.

Every person who wilfully makes a false entry in any register, notice, certificate, or document required by this Act to be kept or served or sent, or who wilfully makes or signs a false declaration under this Act, or who knowingly makes use of any such false entry or declaration, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour.

86. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine, has in fact been committed by some agent, servant, workman, or other person, such agent, servant, workman, or other person shall be liable to the same fine as if he were the occupier (*a*).

87. Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

When it is made to appear to the satisfaction of an inspector at the time of discovering the offence, that the occupier of the factory or workshop had used all due diligence to enforce the execution of this Act, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or

(*z*) Sec. 23. (*a*) Sec. 81.

connivance of the occupier and in contravention of his orders, then the inspector shall proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the occupier of the factory or workshop.

88. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

(*a.*) where the repetition of the offence occurs after an information has been laid for the previous offence ; or

(*b.*) where the offence is one of employing two or more children, young persons, or women contrary to the provisions of this Act.

(5.) *Legal Proceedings.*

89. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts (*b*).

A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

All fines imposed in pursuance of this Act shall, save as otherwise expressly provided by this Act, be paid into the Exchequer.

The court of summary jurisdiction, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of that factory or workshop, and the father, son, or brother of such occupier, shall not be qualified to act as a member of such court.

90. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal (*c*) therefrom ; subject, in England, to the conditions and regulations following :

(1.) The appeal shall be made to the next practicable court of general or quarter sessions having jurisdiction in the county

(*b*) 11 & 12 Vict. c. 43, and Summary Jurisdiction Act of 1879 (42 & 43 Vict. c. 49).

(*c*) Sec. 91, sub-s. 6, and ss. 31 and 32 of Summary Jurisdiction Act of 1879.

or place in which the decision of the court was given, holden not less than twenty-one days after the day on which such decision was given ; and

(2.) The appellant shall, within ten days after the day on which the decision of the court was given, serve notice on the other party and on the clerk of the court of summary jurisdiction of his intention to appeal, and of the general grounds of such appeal ; and

(3.) The appellant shall, within three days after such notice is served, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or the appellant may, if the court of summary jurisdiction thinks it expedient, instead of entering into a recognizance give such other security by deposit of money with the clerk of the court of summary jurisdiction or otherwise as the court deem sufficient ; and

(4.) Where the appellant is in custody a court of summary jurisdiction may, if they think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody ; and

(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just ; and

(6.) The court of appeal may also make such order as to costs to be paid by either party as the court thinks just ; and

(7.) Whenever a decision is reversed by the court of appeal the clerk of the peace shall indorse on the conviction or order appealed against a memorandum that the same has been quashed, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction or order has been quashed, in every case where such copy or certificate would be sufficient evidence of such conviction or order ; and

(8.) Every notice in writing required by this section to be given by an appellant may be signed by him or by his agent on his behalf, and may be transmitted in a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of post.

91. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act :

(1.) The information shall be laid within two months, or, where the offence is punishable at discretion by imprisonment, or is a breach of the provisions of this Act with respect to holidays, within three months after the commission of the offence :

(2.) The description of an offence in the words of this Act, or in similar words, shall be sufficient in law :

(3.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant :

(4.) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more :

(5.) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop or the title of the firm by which he occupier employing persons in the factory or workshop is usually known :

(6.) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

92. If a person is found in a factory, except at meal times, or while all the machinery of the factory is stopped, or for the sole purpose of bringing food to the persons employed in the factory between the hours of four and five o'clock in the afternoon, such person shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory :

Provided that yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory within the meaning of this enactment ; and this enactment shall not apply to a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply (*d*).

Where a child or young person is, in the opinion of the court, ap-

(*d*) Sec. 61.

parently of the age alleged by the informant, it shall lie on the defendant to prove that the child or young person is not of that age.

A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of such conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, upon the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

PART IV.

Definitions, Savings, Application to Scotland and Ireland, and Repeal.

(1.) *Definitions.*

93. The expression "textile factory" in this Act means—

any premises wherein or within the close or curtilage of which steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing (*e*),

(*e*) As to "finishing" and "incident," see *Whymper* v. *Harney* (1865), 18 C. B. N. S. 243; 34 L. J. M. C. 113. (Weaving or plaiting of cotton thread by steam, or other mechanical power, into a covering for strips of iron, to be used in making crinoline skirts, a process incidental to the manufacture of a cotton fabric, within 7 Vict. c. 15, s. 73.)

Hardcastle v. *Jones* (1862), 3 B. & S. 153; 32 L. J. M. C. 49. (S. B., employed in "skutching"—that is, the first process of finishing goods, which have been printed—in a room where no persons were employed in printing figures. But this room had direct communication with the print works, in which all the processes of printing were carried on: held that S. B. was employed in a print work. The Court did not decide whether skutching was an "incident to printing process.") *Taylor* v. *Hickes* (1862), 12 C. B. N. S. 152; L. J. M. C. 242. (Appellant, occupier of premises in which steam power was used to drive machinery employed in manufacturing webbing, of which men's braces and horses' girths were made. The premises formed a square; on the left were the buildings in which steam power was used; on the right the manufacture of braces and girths was carried on. H., a child, was employed in boring holes in pieces of leather to be attached to the webbing. No part of the webbing was placed in his hands, and no machinery was in the room in which he was employed: held employment in a factory within 7 & 8 Vict. c. 15.) *Hoyle* v. *Oram* (1862), 12 C. B. N. S. 124. (Child employed by calico printers; bleaching, dyeing, and finishing or stiffening were performed at one mill belonging to appellants, printing at another. These places were seven miles apart: held that a child employed at the former was employed in "an incidental" printing process within 8 & 9 Vict. c. 29, and that the place where he was employed formed a part of "the establishment where the chief process of printing was carried

or in any process incident to the manufacture of, cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof :

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories.

The expression "non-textile factory" in this Act means—

(1.) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Fourth Schedule to this Act,

(2.) also any premises or places named in Part Two of the said schedule wherein or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there,

(3.) also any premises wherein, or within the close or curtilage or precincts of which, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them ; that is to say,

(*a.*) in or incidental to the making of any article or of part of any article, or

(*b.*) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or

(*c.*) in or incidental to the adapting for sale of any article,

and wherein, or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

The expression "factory" in this Act means textile factory and non-textile factory, or either of such descriptions of factories.

The expression "workshop" in this Act means—

(1.) any premises or places named in Part Two of the Fourth Schedule to this Act, which are not a factory within the meaning of this Act,

on.") *Howarth* v. *Coles* (1862), 12 C. B. N. S. 139. (A child whose sole business was "raising," or finishing fustians at works where no bleaching or dyeing was done, not within the Bleaching and Dyeing Works Act, 23 & 24 Vict. c. 78.) Finishing, in s. 7, "evidently means finishing as incidental to the operations of bleaching or dyeing." Byles, J. *Haydon* v. *Taylor* (1863), 33 L. J. M. C. 30. (Thread manufactured in hanks at respondent's manufactory at Mansfield. These hanks were sent to his manufactory at Leicester, to be wound by machinery moved by steam on to cops, and then on to spools : held that the latter premises were a factory within 3 & 4 Will. IV., c. 103 ; and that the winding was a process incidental to the manufacture of thread.) *Coles* v. *Dickinson* (1864), 16 C. B. N. S. 604 ; 33 L. J. M. C. 235. (Respondents owned a paper mill at Manchester, and another in Herts ; the former used for sorting, cleaning, and working up rags, and reducing them "to half stuff." At the latter this "stuff" was converted into paper : held, on the authority of *Hoyle* v. *Oram*, that the two were parts of one factory and that the latter was exempted from the operation of the 7 & 8 Vict. c. 15.)

(2.) also any premises, room, or place not being a factory within the meaning of this Act, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes or any of them; that is to say,

(*a.*) in or incidental to the making of any article or of part of any article, or

(*b.*) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or

(*c.*) in or incidental to the adapting for sale of any article,

and to which or over which premises, room, or place the employer of the persons working therein has the right of access or control.

A part of a factory or workshop may for the purposes of this Act be taken to be a separate factory or workshop; and a place solely used as a dwelling shall not be deemed to form part of the factory or workshop for the purposes of this Act.

Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, such place shall not be deemed to form part of that factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

Any premises or place shall not be excluded from the definition of a factory or workshop by reason only that such premises or place are or is in the open air (*f*).

This Act shall not apply to such workshops, other than bakehouses, as are conducted on the system of not employing any child, young person, or woman therein, but save as aforesaid applies to all factories and workshops as before defined, inclusive of factories and workshops belonging to the Crown; provided that in case of any public emergency a Secretary of State may exempt a factory or workshop belonging to the Crown from this Act to the extent and during the period named by him.

The exercise by any child or young person in any recognised efficient school during a portion of the school hours of any manual labour for the purpose of instructing such child or young person in any art or handicraft, shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

94. A child, young person, or woman who works in a factory or workshop, whether for wages or not, either in a manufacturing process or

(*f*) Intended to obviate the decision in *Kent* v. *Astley* (1869), L. R. 5 Q. B. 19; 39 L. J. M. C. 3; and *Redgrave* v. *Lee* (1874), L. R. 9 Q. B. 363; 43 L. J. M. C. 105. See note (*a.*)

handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manfacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

For the purposes of this Act an apprentice shall be deemed to work for hire.

95. The expression "certified efficient school" in this Act means a public elementary school within the meaning of the Elementary Education Acts, 1870 and 1873, and any workhouse school in England certified to be efficient by the Local Government Board, and also any elementary school which is not conducted for private profit and is open at all reasonable times to the inspection of Her Majesty's inspectors of schools, and requires the like attendance from its scholars as is required in a public elementary school, and keeps such registers of those attendances as may be for the time being required by the Education Department, and is certified by the Education Department to be an "efficient school;" and the expression "recognised efficient school" means a certified efficient school as above defined, and also any school which the Education Department have not refused to take into consideration under the Elementary Education Act, 1870, as a school giving efficient elementary education to and suitable for the children of a school district, and which is recognised for the time being by an inspector under this Act as giving efficient elementary education, and the inspector shall immediately report to the Education Department every school so recognised by him.

96. In this Act, unless the context otherwise requires,—

The expression "child" means a person under the age of fourteen years:

The expression "young person" means a person of the age of fourteen years and under the age of eighteen years:

The expression "woman" means a woman of eighteen years of age and upwards:

The expression "parent" (*g*) means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages, of a child or young person:

The expression "Treasury" means the Commissioners of Her Majesty's Treasury:

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

(*g*) See s. 3 of Education Act of 1870.

The expression "Education Department" means the Lords of the Committee of the Privy Council on Education :

The expression "sanitary authority" means an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and any commissions, board, or vestry in the metropolis having the like powers as such urban sanitary authority :

The expression "person" includes a body of persons corporate or unincorporate :

The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night :

The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning :

The expression "prescribed" means prescribed for the time being by a Secretary of State :

The expression "Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same :

The expression "court of summary jurisdiction" means any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to :

The expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process.

The factories and workshops named in the Fourth Schedule to this Act are in this Act referred to by the names therein assigned to them.

Special Exemption of certain Trades.

97. The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour by way of trade or for the purposes of gain in or incidental to any of the handicrafts specified in the Fifth Schedule to this Act, shall not of itself constitute such house or room a workshop within the meaning of this Act.

When it is proved to the satisfaction of a Secretary of State that by reason of the light character of the handicraft carried on in any private house or private room by the family dwelling therein, or by any of them, it is expedient to extend this section to that handicraft, he may by order extend the same.

The order shall be made in manner provided by Part Two of this

Act, and that part shall apply so far as circumstances admit as if the order were an order extending an exception.

98. The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour for the purposes of gain in or incidental to some of the purposes in this Act in that behalf mentioned, shall not of itself constitute such house or room a workshop where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to such family.

(2.) *Savings.*

99. Where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power, in or about or in connection with which machine or implement children, young persons, or women are employed, is some person other than the occupier of the factory, and such children, young persons, or women are in the employment and pay of the owner or hirer of such machine or implement, in any such case such owner or hirer shall, as far as respects any offence against this Act which may be committed in relation to such children, young persons, or women, be deemed to be the occupier of the factory.

100. Nothing in this Act shall extend—

(1.) To any young person, being a mechanic, artisan, or labourer, working only in repairing either the machinery in or any part of a factory or workshop ; or

(2.) To the process of gutting, salting, and packing fish immediately upon its arrival in the fishing boats.

101. The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace not kept in a cleanly state, or not ventilated or overcrowded, shall not apply to a factory or workshop which is subject to the provisions of this Act relating to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, and workplace.

It is hereby declared that the Public Health Act, 1875, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as it applies to buildings where more than twenty are employed.

102. Any enactment or document referring to the Acts repealed by this Act, or any of them, or to any enactment thereof, shall be construed to refer to this Act and to the corresponding enactment thereof.

(3.) *Application of Act to Scotland and Ireland.*

103. The provisions of this Act shall, in the case of a factory or workshop in Scotland or Ireland, in which a child under the age of ten years may lawfully be employed at the passing of this Act, be modified as follows ; that is to say,

(1.) Shall apply during twelve months after the commencement of this Act to children of the age of nine years and upwards, as if they were of the age of ten years ; and

(2.) Shall not prevent a child who, before the commencement of this Act, is lawfully employed in any factory or workshop as a child under the age of nine years, or any child who during the twelve months next after the commencement of this Act is lawfully employed in any factory or workshop as a child under the age of ten years, from continuing to be employed in a factory or workshop in like manner as if the child were above the age of ten years ; and

(3.) Shall apply during twelve months after the commencement of this Act to children of the age of thirteen years and upwards as if they were young persons ; and

(4.) Shall not prevent a child, who before the expiration of twelve months after the commencement of this Act is lawfully employed in a factory or workshop as a young person, from continuing to be employed in a factory or workshop as a young person.

104. Where the age of any child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the elementary education or employment in labour of such child, any person, on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by a Secretary of State, and on payment of such fee, not exceeding one shilling, as a Secretary of State from time to time fixes, shall be entitled to obtain—

(1.) In Scotland an extract under the hand of the registrar under the Act of the seventeenth and eighteenth years of Her present Majesty, chapter eighty, and any Acts amending the same, of the entry in the register kept under those Acts ; and

(2.) In Ireland a certified copy under the hand of the registrar or superintendent registrar under the Registration of Births and Deaths (Ireland) Act of the entry in the register under that Act of the birth of the child named in the requisition.

105. In the application of this Act to Scotland—

(1.) The expression "certified efficient School" means any public or other elementary school under Government inspection :

(2.) In lieu of Christmas Day and either Good Friday or the next public holiday under the Holidays Extension Act, 1875, there shall be allowed as a holiday to every child, young person, and woman employed in a factory or workshop the whole of two days separated from each other by an interval of not less than three months, one of which shall be a day set apart by the Church of Scotland for the observance of the sacramental fast in the parish in which the factory or workshop

is situate, or some other day substituted for such day as aforesaid by the occupier specifying the same in the notice affixed in the factory or workshop :

(3.) The expression "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1867 :

(4.) The expression "medical officer of health" means the medical officer under the Public Health (Scotland) Act, 1867, or where no such officer has been appointed, the medical officer appointed by the parochial board :

The expression "poor law medical officer" means the medical officer appointed by the parochial board :

(5.) The expression "Companies Clauses Consolidation Act, 1845," means the Companies Clauses Consolidation (Scotland) Act, 1845 :

(6.) The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same :

(7.) The expression "court of summary jurisdiction" means the sheriff of the county or any of his substitutes :

(8.) The expression "Education Department" means the Lords of the Committee of the Privy Counsel appointed by Her Majesty on Education in Scotland :

(9.) The expression "county court" means the sheriff court :

(10.) All matters required by this Act to be published in the London Gazette shall (if they relate exclusively to Scotland), instead of being published in the London Gazette, be published in the Edinburgh Gazette only :

(11.) The expression "information" means petition or complaint :

(12.) The expression "informant" means petitioner, pursuer, or complainer :

(13.) The expression "defendant" means defendant or respondent :

(14.) The expression "clerk of the peace" means sheriff clerk :

(15.) All offences under this Act shall be prosecuted and all penalties under this Act shall be recovered under the provisions of the Summary Jurisdiction Acts at the instance of the procurator fiscal or of an inspector under this Act :

(16.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by such procurator fiscal or inspector presented in common form :

(17.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months :

(18.) It shall be no objection to the competency of an inspector to give evidence as a witness in any prosecution for offences

under this Act, that such prosecution is brought at the instance of such inspector :

(19.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction :

(20.) All penalties imposed and recovered under this Act shall be paid to the clerk of the court, and by him accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, on behalf of Her Majesty's Exchequer, and shall be carried to the Consolidated Fund :

(21.) All jurisdictions, powers, and authorities necessary for the purposes of this section are conferred on the sheriffs and their substitutes :

(22.) Any person may appeal from any order or conviction under this Act to the Court of Justiciary, under and in terms of the Act of the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, or under any enactment amending that Act, or applying or incorporating its provisions, or any of them, with regard to appeals, or to the Court of Justiciary at Edinburgh under and in terms of the Summary Prosecutions Appeal (Scotland) Act, 1875.

106. In the application of this Act to Ireland—

(1.) The expression "certified efficient School" means any national school, or any school recognised by the Lord Lieutenant and Privy Council as affording sufficient means of literary education for the purposes of this Act :

(2.) In lieu of any two half-holidays allowed under the provisions of sub-section (2) in section twenty-two of this Act, there shall be allowed as a holiday to every child, young person, and woman employed in a factory or workshop the whole of the seventeenth day of March ; Provided, that when this date falls on a Sunday, this sub-section shall have no effect as regards such date :

(3.) The expression "sanitary authority" means an urban or rural sanitary authority within the meaning of the Public Health (Ireland) Act, 1874, and any Act amending the same :

(4.) The expression "medical officer of health" means the medical sanitary officer of the sanitary district :

The expression "poor law medical officer" means the dispensary doctor :

(5.) Any act authorised to be done or consent required to be given by the Education Department under this Act shall be done and given by the Lord Lieutenant or Lords Justices of Ireland, acting by and with the advice of the Privy Council in Ireland :

(6.) The expression "county court" means the civil bill court :

(7.) The expression "Summary Jurisdiction Acts" means, within

the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :

(8.) A court of summary jurisdiction when hearing and determining an information or complaint in any matter arising under this Act shall be constituted within the police district of Dublin metropolis of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of a stipendiary magistrate sitting alone, or with others, or of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions :

(9.) Appeals from a court of summary jurisdiction shall lie in the manner and subject to the conditions and regulations prescribed in the twenty-fourth section of the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same :

(10.) All fines imposed under this Act shall, save as is otherwise expressly provided by this Act, be applied in the manner directed by the Fines Act (Ireland), 1851, and any Act amending the same :

(11.) The provisions of section nineteen of the Public Health Act 1866, or of any enactment substituted for that section, with respect to any factory, workshop, or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory or workshop which is subject to the provisions of this Act with respect to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, and workplace :

It is hereby declared that the Sanitary Acts within the meaning of the Public Health (Ireland) Act, 1874, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as they apply to buildings where more than twenty persons are employed :

(12.) All matters required by this Act to be published in the London Gazette shall, if they relate exclusively to Ireland, instead of being published in the London Gazette, be published in the Dublin Gazette only.

(4.) *Repeal.*

107. The Acts specified in the Sixth Schedule to this Act are hereby repealed from and after the commencement of this Act to the extent in the third column of that schedule mentioned :

Provided that—

(1.) All notices affixed in the factory in pursuance of the Acts

hereby repealed shall, so far as they are in accordance with the provisions of this Act, be deemed to have been affixed in pursuance of this Act ; and

(2.) All inspectors, sub-inspectors, officers, clerks, and servants appointed in pursuance of the Acts hereby repealed shall continue in office and shall be subject to removal and have the same powers and duties as if they had been appointed in pursuance of this Act ; and

(3.) All certifying surgeons appointed in pursuance of any Act hereby repealed shall be deemed to have been appointed in pursuance of this Act ; and

(4.) All surgical certificates granted in pursuance of any Act hereby repealed shall have effect as certificates of fitness for employment granted in pursuance of this Act, and all registers kept in pursuance of any Act hereby repealed shall, until otherwise directed by a Secretary of State, be deemed to be the registers required by this Act ; and

(5.) Any order made by a Secretary of State in pursuance of any enactment hereby repealed for granting any permission or relaxation to any factories or workshops may, if the Secretary of State so direct, continue in force for a period not exceeding three months after the commencement of this Act ; and

(6.) The standard of proficiency fixed by the Education Department in pursuance of any enactment hereby repealed shall be deemed to have been fixed in pursuance of this Act ; and

(7.) A child exempted by section eight of the Elementary Education Act, 1876, from the provisions of section twelve of the Factory Act, 1874, by reason of his having attained the age of eleven years before the first day of January, 1877, shall, on attaining the age of thirteen years, be deemed to be a young person within the meaning of this Act :

(8.) This repeal shall not affect—

(*a.*) Anything duly done or suffered under any enactment hereby repealed ; or

(*b.*) Any obligation or liability incurred under any enactment hereby repealed ; or

(*c.*) Any penalty or punishment incurred in respect of any offence committed against an enactment hereby repealed ; or

(*d.*) Any legal proceeding or remedy in respect of any such obligation, liability, penalty, or punishment as aforesaid, and any such legal proceeding and remedy may be carried on as if this Act had not passed.

SCHEDULES.

FIRST SCHEDULE.

Special Provisions for Health.

Factories and Workshops in which the Employment of Young Persons and Children is Restricted.

1. In a part of a factory or workshop in which there is carried on—
the process of silvering of mirrors by the mercurial process ; or
the process of making white lead,
a young person or child shall not be employed.

2. In the part of a factory in which the process of melting or annealing glass is carried on a child or female young person shall not be employed.

3. In a factory or workshop in which there is carried on—
(*a.*) the making or finishing of bricks or tiles not being ornamental tiles ; or
(*b.*) the making or finishing of salt,
a girl under the age of sixteen years shall not be employed.

4. In a part of a factory or workshop in which there is carried on—
(*a.*) Any dry grinding in the metal trade, or
(*b.*) the dipping of lucifer matches,
a child shall not be employed.

5. In any grinding in the metal trades other than dry grinding or in fustian cutting a child under the age of eleven years shall not be employed.

SECOND SCHEDULE.

Special Restrictions.

Places forbidden for Meals.

The prohibition on a child, young person, or woman taking a meal or remaining during the times allowed for meals in certain parts of factories or workshops applies to the parts of factories and workshops following ; that is to say,

(1.) In the case of glass works, to any part in which the materials are mixed ; and

(2.) In the case of glass works where flint glass is made, to any part in which the work of grinding, cutting, or polishing is carried on ; and

(3.) In the case of lucifer-match works, to any part in which any manufacturing process or handicraft (except that of cutting the wood) is usually carried on ; and

(4.) In the case of earthenware works, to any part known or used as dippers' house, dippers' drying room, or china scouring room.

THIRD SCHEDULE.

Special Exceptions.

Part I.

Period of Employment.

The exception respecting the employment of children, young persons, and women between the hours of eight in the morning and eight in the evening, and on Saturday between the hours of eight in the morning and four in the afternoon or between the hours of seven in the morning and three in the afternoon, applies to any factory or workshop or part thereof in which any of the following manufacturing processes or handicrafts are carried on ; that is to say,

(*a.*) Lithographic printing :
(*b.*) Turkey red dyeing :
(*c.*) The making of any article of wearing apparel :
(*d.*) The making of furniture hangings :
(*e.*) Artificial flower making :
(*f.*) Bon-bon and Christmas present making :
(*g.*) Valentine making :
(*h.*) Fancy box making :
(*i.*) Envelope making :
(*k.*) Almanack making :
(*l.*) Playing card making :
(*m.*) Machine ruling :
(*n.*) Biscuit making :
(*o.*) Firewood cutting :
(*p.*) Job dyeing : or
(*q.*) Aërated water making ; and also to
(*r.*) Bookbinding works :
(*s.*) Letter-press printing works : and
(*t.*) A part of a factory or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods.

Part II.

Meal Hours.

The case in which the provisions of this Act as to meal times being allowed at the same hour of the day are not to apply are—

(1.) The case of children, young persons, and women employed in the following factories ; that is to say,
Blast furnaces,

Iron mills,
Paper mills,
Glass works, and
Letter-press printing works ;

(2.) The case of male young persons employed in that part of any print works or bleaching or dyeing works in which the process of dyeing or open-air bleaching is carried on.

The cases in which and the extent to which the provisions of this Act as to a child, young person, or woman during the times allowed for meals being employed or being allowed to remain in a room in which a manufacturing process or handicraft is being carried on, are not to apply are,—

(1.) The case of children, young persons, and women employed in the following factories ; that is to say,
Iron mills,
Paper mills,
Glass works (save as otherwise provided by this Act), and
Letter-press printing works ; and

(2.) The case of a male young person employed in that part of any print works or bleaching and dyeing works in which the process of dyeing or open-air bleaching is carried on, to this extent, that the said provisions shall not prevent him, during the times allowed for meals to any other young person or to any child or woman, from being employed or being allowed to remain in any room in which any manufacturing process is carried on, and shall not prevent, during the times allowed for meals to such male young person, any other young person or any child or woman from being employed in the factory or allowed to remain in any room in which any manufacturing process is carried on.

Part III.

Overtime.

The exception with respect to the employment of young persons and women for forty-eight days in any twelve months during a period of employment beginning at six or seven o'clock in the morning and ending at eight or nine o'clock in the evening, or beginning at eight o'clock in the morning and ending at ten o'clock in the evening, applies to each of the factories and workshops, and parts thereof, following ; that is to say,

(1.) Where the material which is the subject of the manufacturing process or handicraft is liable to be spoiled by weather ; namely,
(*a.*) Flax scutch mills ; and

(*b.*) A factory or workshop or part thereof in which is carried on the making or finishing of bricks or tiles not being ornamental tiles ; and

(*c.*) The part of rope works in which is carried on the open-air process ; and

(*d.*) The part of bleaching and dyeing works in which is carried on open-air bleaching or Turkey red dyeing ; and

(*e.*) A factory or workshop or part thereof in which is carried on glue making ; and

(2.) Where press of work arises at certain recurring seasons of the year ; namely,

(*f.*) Letter-press printing works ;

(*g.*) Bookbinding works ; and

a factory, workshop, or part thereof in which is carried on the manufacturing process or handicraft of—

(*h.*) Lithographic printing ; or

(*i.*) Machine ruling ; or

(*k.*) Firewood cutting ; or

(*l.*) Bon-bon and Christmas present making ; or

(*m.*) Almanack making ; or

(*n.*) Valentine making ; or

(*o.*) Envelope making ; or

(*p.*) Aërated water making ; or

(*q.*) Playing card making ; and

(3.) Where the business is liable to a sudden press of orders arising from unforeseen events ; namely,

a factory or workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—

(*r.*) The making up of any article of wearing apparel ; or

(*s.*) The making up of furniture hangings ; or

(*t.*) Artificial flower making ; or

(*u.*) Fancy box making ; or

(*v.*) Biscuit making ; or

(*w.*) Job dyeing ; and also,

(*x.*) A part of a factory or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods.

Provided that the said exception shall not apply—

(*a.*) Where persons are employed at home, that is to say, to a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used,

and in which the only persons employed are members of the same family dwelling there ; or

(*b.*) To a workshop or part thereof which is conducted on the system of not employing any child or young person therein.

Part IV.

Additional Half Hour.

The exception with respect to the employment of a child, young person, or woman for a further period of thirty minutes where the process is in an incomplete state applies to the factories following ; (that is to say,)

(*a.*) Bleaching and dyeing works ;

(*b.*) Print works ;

(*c.*) Iron mills in which male young persons are not employed during any part of the night ;

(*d.*) Foundries in which male young persons are not employed during any part of the night ; and

(*e.*) Paper mills in which male young persons are not employed during any part of the night.

Part V.

Overtime for Perishable Articles.

The exception with respect to the employment of women for ninety-six days in any twelve months during a period of employment beginning at six or seven o'clock in the morning and ending at eight or nine o'clock in the evening applies to a factory or workshop or part thereof in which any of the following processes is carried on ; namely,

The process of making preserves from fruit,

The process of preserving or curing fish, or

The process of making condensed milk.

Part VI.

Night Work.

The exception with respect to the employment of male young persons during the night applies to the factories following ; (that is to say,)

(*a.*) Blast furnaces,

(*b.*) Iron mills,

(*c.*) Letter-press printing works, and

(*d.*) Paper mills.

Part VII.

Spell.

The exception respecting the continuous employment in certain textile factories during the winter months of children, young persons, and women without an interval of at least half an hour for a meal for the same period as in a non-textile factory, applies to textile factories solely used for—

(*a.*) The making of elastic web ; or

(*b.*) The making of ribbon ; or

(*c.*) The making of trimming.

FOURTH SCHEDULE.

List of Factories and Workshops.

Part I.

Non-Textile Factories.

(1.) "Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper ;

(2.) "Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on :

(3.) "Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware of any description, except bricks and tiles not being ornamental tiles :

(4.) "Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood ;

(5.) "Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps ;

(6.) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges ;

(7.) "Paper-staining works," that is to say, any place in which

persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power ;

(8.) "Fustian-cutting works," that is to say, any place in which persons work for hire in fustian-cutting ;

(9.) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on ;

(10.) "Copper mills" ;

(11.) "Iron mills," that is to say, any mill, forge or other premises in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel ;

(12.) "Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on ; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work ;

(13.) "Metal and india-rubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha ;

(14.) "Paper mills" (*h*), that is to say, any premises in which the manufacture of paper is carried on ;

(15.) "Glass works," that is to say, any premises in which the manufacture of glass is carried on ;

(16.) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on ;

(17.) "Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on ;

(18.) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on ;

(19.) Flax scutch mills.

Part II.

Non-Textile Factories and Workshops.

(20.) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on ;

(21.) "Rope works," that is to say, any premises being a ropery, rope-walk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in

(*h*) *Coles* v. *Dickinson*. See note (*c*).

which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power ;

(22.) "Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived ;

(23.) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as hereinbefore defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power ;

(24.) "Shipbuilding yards" (*i*), that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired ;

(25.) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals ;

(26.) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts.

FIFTH SCHEDULE.

Special Exemptions.

Straw plaiting.
Pillow-lace making.
Glove making.

(*i*) *Palmer's Ship-building Co.* v. *Claytor* (1869), L. R. 4 Q. B. 209.

SIXTH SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Title of Act.	Extent of Repeal.
42 Geo. 3, c. 73 . .	An Act for the preservation of the health and morals of apprentices and others employed in cotton and other mills and cotton and other factories.	The whole Act.
3 & 4 Will. 4, c. 103	An Act to regulate the labour of children and young persons in the mills and factories of the United Kingdom.	The whole Act.
7 & 8 Vict. c. 15 .	An Act to amend the laws relating to labour in factories.	The whole Act.
9 & 10 Vict. c. 40 .	An Act to declare certain ropeworks not within the operation of the Factory Acts.	The whole Act.
13 & 14 Vict. c. 54 .	An Act to amend the Acts relating to labour in factories.	The whole Act.
16 & 17 Vict. c. 104	An Act further to regulate the employment of children in factories.	The whole Act.
19 & 20 Vict. c. 38 .	The Factory Act, 1856.	The whole Act.
24 & 25 Vict. c. 117	An Act to place the employment of women, young persons, youths, and children in lace factories under the regulations of the Factories Acts.	The whole Act.
26 & 27 Vict. c. 40 .	The Bakehouse Regulation Act, 1863.	The whole Act.
27 & 28 Vict. c. 48 .	The Factory Acts Extension Act, 1864.	The whole Act.
29 & 30 Vict. c. 90 .	The Sanitary Act, 1866.	The following words (so far as unrepealed) in section nineteen, "not already under the operation of any general Act for the regulation of factories or bakehouses."
30 & 31 Vict. c. 103	The Factory Acts Extension Act, 1867.	The whole Act.
30 & 31 Vict. c. 146	The Workshop Regulation Act, 1867.	The whole Act.
33 & 34 Vict. c. 62 .	The Factory and Workshop Act, 1870.	The whole Act.
34 & 35 Vict. c. 19 .	An Act for exempting persons professing the Jewish religion from penalties in respect of young persons and females professing the said religion working on Sundays.	The whole Act.

Session and Chapter.	Title of Act.	Extent of Repeal.
34 & 35 Vict. c. 104	The Factory and Workshop Act, 1871.	The whole Act.
37 & 38 Vict. c. 44	The Factory Act, 1874.	The whole Act.
38 & 39 Vict. c. 55	The Public Health Act, 1875.	The following words in section four, "more than twenty," and the words "at one time," and the following words in section ninety-one, "not already under the operation of any general Act for the regulation of factories or bakehouses."
39 & 40 Vict. c. 79	The Elementary Education Act, 1876.	Section eight and the following words in section forty-eight, "the Factory Acts, 1833 to 1874, as amended by this Act, and includes the Workshop Acts, 1867 to 1871, as amended by this Act, and ".

CHAPTER X.

EDUCATION OF CHILDREN IN EMPLOYMENT.

In the Coal Mines Regulation Act, 1872 (ss. 8—10), and in the Factory and Workshop Act, 1878 (ss. 23—26), are sections dealing with the education of children. Appended are the chief sections of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), and the amending Acts relative to the education of children in employment. Some of these Acts are, apparently, not consistent; and in *Bury* v. *Cherryholme*, L. R. 1 Ex. D. 457, the question arose which of the Acts was to be followed. In that case the facts were these:—the respondent's child was employed in a workshop at Barnsley, and attended a school pursuant to the provisions of the Workshop Regulation Act, 1867, s. 14, which enacted that every child "employed in a workshop shall attend school for at least ten hours in every week." The School Board of Barnsley made bye-laws, by which all children were required to attend school, "the whole time that the school shall be open for the instruction of children of the same sex, age, and class." The Exchequer Division held that the two statutes could be read together. "The result is that the School Board may determine the time during which a child employed in a workshop shall attend school, provided the time fixed on is not less than ten hours a-week; but a bye-law that a child should attend school during only nine hours in the week would be void, as being against the provisions of the Workshop Act of 1867," Bramwell, B. The case was not argued for the respondent; and the decision is not in harmony with the subsequent case of *Mellor* v. *Denham*, L. R. 4 Q. B.

D. 241, decided in 1879. An information had been laid against the father of a boy between ten and eleven years old for neglecting to cause him to attend school as required by the bye-laws of the School Board for Oldham. The boy was employed in a cotton factory at Oldham, and was attending an efficient elementary school, pursuant to the Factory Acts. The Court relied upon the 74th section of the Elementary Education Act, 1870, which enacts that no bye-law made by a school board "shall be contrary to anything contained in any Act for regulating the education of children employed in labour." The Court decided, "1st, the school board are not entitled to enforce their bye-laws against children between the ages of ten and thirteen years, who, although not obeying such bye-laws, are attending efficient elementary schools, pursuant to and otherwise fulfilling and observing the conditions of the Factory Acts; 2nd, the Elementary Education Acts do not control the provisions of the Factory Acts, regulating the education of children employed in accordance with those Acts" (*a*).

33 & 34 VICT. c. 75 (1870).

An Act to provide for Public Elementary Education in England and Wales.

Attendance at School.

74. Every school board may from time to time, with the approval of the education department, make bye-laws for all or any of the following purposes:—

(1.) Requiring the parents of children of such age, not less than five years, nor more than thirteen years, as may be fixed by the bye-laws, to cause such children (unless there is some reasonable excuse) to attend school: (*b*)

(2.) Determining the time during which children are so to attend school; provided that no such bye-law shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to

(*a*) See, however, 43 & 44 Vict. c. 23, s. 4.

(*b*) *Belper School Committee* v. *Bailey* (1882), L. R. 9 Q. B. D. 289; *Hance* v. *Burnett*, 45 J. P. 54, cited in Glen's Elementary Education Acts, p. 75.

attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs, or shall be contrary to anything contained in any Act for regulating the education of children employed in labour :

(3.) Providing for the remission or payment of the whole or any part of the fees of any child where the parent satisfies the school board that he is unable from poverty to pay the same :

(4.) Imposing penalties for the breach of any bye-laws :

(5.) Revoking or altering any bye-law previously made. Provided that any bye-law under this section requiring a child between ten and thirteen years of age to attend school shall provide for the total or partial exemption of such child from the obligation to attend school if one of Her Majesty's inspectors certifies that such child has reached a standard of education specified in such bye-law.

Any of the following reasons shall be a reasonable excuse ; namely,

(1.) That the child is under efficient instruction in some other manner :

(2.) That the child has been prevented from attending school by sickness or any unavoidable cause :

(3.) That there is no public elementary school open which the child can attend within such distance, not exceeding three miles measured according to the nearest road from the residence of such child, as the bye-laws may prescribe.

The school board, not less than one month before submitting any bye-law under this section for the approval of the education department, shall deposit a printed copy of the proposed bye-laws at their office for inspection by any ratepayer, and supply a printed copy thereof gratis to any ratepayer, and shall publish a notice of such deposit.

The education department before approving of any bye-laws shall be satisfied that such deposit has been made and notice published, and shall cause such inquiry to be made in the school district as they think requisite.

Any proceeding to enforce any bye-law may be taken, and any penalty for the breach of any bye-law may be recovered, in a summary manner ; but no penalty imposed for the breach of any bye-law shall exceed such amount as with the costs will amount to five shillings for each offence, and such bye-laws shall not come into operation until they have been sanctioned by her Majesty in council.

It shall be lawful for her Majesty, by order in council, to sanction the said bye-laws, and thereupon the same shall have effect as if they were enacted in this Act.

All bye-laws sanctioned by her Majesty in council under this section shall be set out in an appendix to the annual report of the education department.

Elementary Education Act, 1873.

36 & 37 VICT. c. 86.

Sect. 24, sub-sect. 4. Any justice may require by summons any parent or employer of a child, required by a bye-law to attend school, to produce the child before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the Court, to comply with such summons shall be liable to a penalty not exceeding twenty shillings.

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39 & 40 VICT. c. 79 (1876).

PART I.

Law as to Employment and Education of Children.

4. It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act.

5. A person shall not, after the commencement of this Act, take into his employment (except as hereinafter in this Act mentioned) any child—

(1.) Who is under the age of ten years; or,

(2.) Who, being of the age of ten years or upwards, has not obtained such certificate either of his proficiency in reading, writing, and elementary arithmetic, or of previous due attendance at a certified efficient school, as is in this Act in that behalf mentioned, unless such child, being of the age of ten years or upwards, is employed, and is attending school in accordance with the provisions of the Factory Acts, or of any bye-law of the local authority (hereinafter mentioned) made under section seventy-four of "The Elementary Education Act, 1870," as amended by "The Elementary Education Act, 1873," and this Act, and sanctioned by the education department.

6. Every person who takes a child into his employment in contravention of this Act shall be liable, on summary conviction, to a penalty not exceeding forty shillings.

7. The provisions of this Act respecting the employment of children shall be enforced—

(1.) In a school district within the jurisdiction of a school board by that board; and

(2.) In every other school district by a committee (in this Act referred to as a school attendance committee) appointed annually, if it

is a borough, by the council of the borough, and if it is a parish, by the guardians of the union comprising such parish.

A school attendance committee under this section may consist of not less than six nor more than twelve members of the council or guardians appointing the committee, so, however, that, in the case of a committee appointed by guardians, one-third at least shall consist of *ex officio* guardians, if there are any, and sufficient *ex officio* guardians. Every such school board and school attendance committee (in this Act referred to as the local authority) shall, as soon as may be, publish the provisions of this Act within their jurisdiction in such a manner as they think best calculated for making those provisions known.

Provided that it shall be the duty of the inspectors and sub-inspectors acting under the Acts regulating factories, workshops, and mines respectively, and not of the local authority, to enforce the observance by the employers of children in such factories, workshops, and mines, of the provisions of this Act respecting the employment of children; but it shall be the duty of the local authority to assist the said inspector and sub-inspectors in the performance of their duty by information and otherwise.

It shall be the duty of such local authority to report to the education department any infraction of the provisions of section seven of "The Elementary Education Act, 1870," in any public elementary school within their district which may come to their knowledge, and also to forward to the education department any complaint which they may receive of the infraction of those provisions.

8. [Refers to sections in Workshop or Factory Acts, repealed by "Factory and Workshop Act, 1878," sect. 107] (*c*).

9. A person shall not be deemed to have taken any child into his employment contrary to the provisions of this Act, if it is proved to the satisfaction of the court having cognizance of the case either—

(1.) That during the employment there is not within two miles, measured according to the nearest road, from the residence of such child any public elementary school open which the child can attend; or

(2.) That such employment, by reason of being during the school holidays, or during the hours during which the school is not open, or otherwise, does not interfere with the efficient elementary instruction of such child, and that the child obtains such instruction by regular attendance for full time at a certified efficient school or in some other equally efficient manner; or

(*c*) *Saunders* v. *Crawford* (1882), L. R. 9 Q. B. D. 613. (In consequence of repeal of Acts referred to in this section, no power to punish parents for not educating children between the age of thirteen and fourteen not having full time employment.)

(3.) That the employment is exempted by the notice of the local authority hereinafter next mentioned; (that is to say),

The local authority may, if it thinks fit, issue a notice exempting from the prohibitions and restrictions of this Act the employment of children above the age of eight years, for the necessary operations of husbandry and the ingathering of crops, for the period to be named in such notice, provided that the period or periods so named by any such local authority shall not exceed in the whole six weeks between the first day of January and the 31st day of December in any year.

The local authority shall cause a copy of every notice so issued to be sent to the education department and to the overseers of every parish within its jurisdiction, and the overseers shall cause such notice to be fixed to the door of all churches and chapels in the parish, and the local authority may further advertise any such notice in such manner (if any) as it may think fit.

39. Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

Where a child is taken into the employment in contravention of this Act on the production by or with the privity of the parent of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

Where an employer charged with taking a child into his employment in contravention of this Act proves that he has used due diligence to enforce the observance of this Act, and either that some agent or workman of his employed the child without his knowledge or consent, or that the child was employed either on the production of a forged or false certificate and under the belief in good faith in the genuineness and truth of such certificate, or on the representation by his parent that the child was of an age at which his employment would not be in contravention of this Act and under the belief in good faith in such representation, the employer shall be exempt from any penalty.

Where an employer satisfies the local authority, inspector, or other person about to institute a prosecution, that he is exempt under this section by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for proceeding against and convicting such agent, workman, or parent, such authority, inspector, or person shall institute proceedings against such agent, workman, or parent, and not against the employer.

47. A parent of a child who employs such child in any labour exercised by way of trade or for the purposes of gain shall be deemed for the purposes of this Act to take such child into his employment.

Elementary Education Act, 1880.

43 & 44 VICT. c. 23.

4. Every person who takes into his employment a child of the age of ten and under the age of thirteen years, resident in a school district, before that child has obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial exemption of children of the like age from the obligation to attend school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act of 1876, and shall be liable to a penalty accordingly.

Proceedings may, in the discretion of the local authority or person instituting the same, be taken for punishing the contravention of a bye-law, notwithstanding that the act or neglect or default alleged as such contravention constitutes habitual neglect to provide efficient elementary education for a child within the meaning of section eleven of the Elementary Education Act, 1876 (*d*): Provided that nothing in this section shall prevent an employer from employing any child who is employed by him or by any other person at the time of the passing of this Act, and who attends school in accordance with the provisions of the Factory and Workshop Act, 1878.

(*d*) That is, children habitually neglected by parents, habitually wandering, or consorting with criminals. See, however, *Saunders* v. *Crawford*, note (*c*).

CHAPTER XI.

SEAMEN.

SEAMEN have been the subject of many special acts (*a*). The law in force as to them is, however, chiefly contained in the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), the principal sections of which are here set out.

17 & 18 VICT. c. 104.

An Act to amend and consolidate the Acts relative to Merchant Shipping.

PART III.

Masters and Seamen.

Sect. 109 states that, "The whole of the third part of this Act shall apply to all sea-going ships registered in the United Kingdom, and also to all ships registered in any British possession and employed in trading or going between any place in the United Kingdom and any place or places not situate in the possession in which such ships are registered, and to the owners, masters, and crews of such ships respectively, wherever the same may be" (*b*).

Sects. 110—121 provide for the constitution of local marine boards, the qualification of voters for members of such boards, and preparation of list of voters.

Sects. 122—130 provide for the establishment of shipping offices (by the 25 & 26 Vict. c. 63, s. 15, called Mercantile Marine Offices) and the appointment of shipping masters (called superintendents).

124. It shall be the general business of shipping masters appointed as aforesaid—

(*a*) See the *Minerva*, 1 Hag. Ad. 347, for the history of this legislation. The other chief statutes in force are 18 & 19 Vict. c. 91 ; 25 & 26 Vict. c. 63 ; 30 & 31 Vict. c. 124 ; 34 & 35 Vict. c. 110 ; 35 & 36 Vict. c. 73 ; 36 & 37 Vict. c. 85 ; 39 & 40 Vict. c. 80 ; 43 & 44 Vict. c. 16.

(*b*) Sec. 13 of 25 & 26 Vict. c. 63 extends the operation of the third part of the Act of 1854 to "(1) Registered seagoing ships exclusively employed in fishing on the coasts of the United Kingdom ; (2) Seagoing ships belonging to any of the three general Lighthouse Boards ; (3) Seagoing ships being pleasure-yachts." Sections 136, 143, 145, 147, 149, 150, 151, 152, 153, 154, 155, 157, 158, 161, 162, 166, 170, 171, 231, 256, 279, 280, 281, 282, 283, 284, 285, 286, 287, do not apply to the three above classes of ships. See *Cope* v. *Doherty* (1858), 27 L. J. Ch. 600.

To afford facilities for engaging seamen by keeping registries of their names and characters ;

To superintend and facilitate their engagement and discharge in manner hereinafter mentioned ;

To provide means for securing the presence on board at the proper times of men who are so engaged ;

To facilitate the making of apprenticeships to the sea service ;

To perform such other duties relating to merchant seamen and merchant ships as are hereby or may hereafter under the powers herein contained be committed to them.

Sects. 131—140 provide for certificates to be given after examinations for master and mates ; and there are similar provisions in 25 & 26 Vict. c. 63, ss. 5—12, as to certificates for engineers.

136. No foreign-going ship or home trade passenger ship shall go to sea from any port in the United Kingdom unless the master thereof, and in the case of a foreign-going ship the first and second mates or only mate (as the case may be), and in the case of a home trade passenger ship the first or only mate (as the case may be), have obtained and possess valid certificates, either of competency or service appropriate to their several stations in such ship, or of higher grade; and no such ship, if of one hundred tons burden or upwards, shall go to sea as aforesaid, unless at least one officer besides the master has obtained and possesses a valid certificate appropriate to the grade of only mate therein or to a higher grade ; and every person who, having been engaged to serve as master or as first or second or only mate of any foreign-going ship, or as master or first or only mate of a home trade passenger ship, goes to sea as aforesaid as such master or mate without being at the time entitled to and possessed of such a certificate as hereinbefore required, or who employs any person as master, or first, second, or only mate of any foreign-going ship, or as master or first or only mate of a home trade passenger ship, without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence incur a penalty not exceeding fifty pounds."

Apprenticeships to the Sea Service.

141. All shipping masters appointed under this Act shall, if applied to for the purpose, give to any board of guardians, overseers, or other persons desirous of apprenticing boys to the sea service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the Board of Trade, with the concurrence, so far as relates to pauper apprentices in England, of the Poor Law Board in England, and so far as relates to pauper apprentices in Ireland, of the Poor Law Commissioners in Ireland.

142. In the case of every boy bound apprentice to the sea service by

any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two justices of the peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose (*c*).

143. All indentures of apprenticeship to the sea service shall be exempt from stamp duty (*d*); and all such indentures shall be in duplicate; and every person to whom any boy whatever is bound as an apprentice to the sea service in the United Kingdom shall within seven days after the execution of the indentures take or transmit the same to the Registrar General of Seamen or to some shipping master; and the said Registrar or shipping master shall retain and record one copy, and shall endorse on the other that the same has been recorded, and shall re-deliver the same to the master of the apprentice; and whenever any such indenture is assigned or cancelled, and whenever any such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death, or desertion, if the same happens within the United Kingdom, or if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same either to the said Registrar of Seamen or to some shipping master to be recorded; and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding ten pounds.

144. Subject to the provisions hereinbefore contained, all apprenticeships to the sea service made by any guardians or overseers of the poor, or persons having the authority of guardians of the poor, shall, if made in Great Britain, be made in the same manner and be subject to the same laws and regulations as other apprenticeships made by the same persons (*e*), and if made in Ireland shall be subject to the following rules . . . .

145. The master of every foreign-going ship shall, before carrying any apprentice to sea from any place in the United Kingdom, cause such apprentice to appear before the shipping master before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if any), and the name of such apprentice with the date of the indenture, and of the assignment or assignments thereof (if any), and the name of the port or ports at which the same have been registered, shall be entered on the agreement; and for any default in obeying the provi-

(*c*) The two justices must be present together, and be acting within their jurisdiction. *Rex* v. *Hamstall Ridware* (1789), 3 T. R. 380, and *Reg.* v. *Totness* (1849), 11 Q. B. 80.

(*d*) See 25 & 26 Vict. c. 63, s. 13.

(*e*) See 43 Eliz. c. 2; 42 Geo. III. c. 46; 56 Geo. III. c. 139; 3 & 4 Will. IV. c. 63; 7 & 8 Vict. c. 101; 14 & 15 Vict. c. 11.

sions of this section the master shall for each offence incur a penalty not exceeding five pounds (*f*).

Engagement of Seamen.

Sections 146—167 deal with engagement of seamen.

149. The master of every ship, except ships of less than eighty tons registered tonnage exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade (*g*), and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say),

(1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement: (*h*)

(2.) The number and description of the crew, specifying how many are engaged as sailors:

(3.) The time at which each seaman is to be on board or to begin work:

(4.) The capacity in which each seaman is to serve:

(5.) The amount of wages which each seaman is to receive: (*i*)

(6.) A scale of the provisions which are to be furnished to each seaman:

(*f*) The *Albert Crosby* (1860), Lush 44. (An apprentice entitled to sue in the Admiralty Court the proceeds of ship in which he has served for wages, but not for the penalty contained in the indenture.)

(*g*) See Boyd's Merchant Shipping Laws, p. 131.

(*h*) By 36 & 37 Vict. c. 85, s. 7, the agreement may state "the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend." As to agreements with fishermen, 36 & 37 Vict. c. 85, s. 8. "The words 'nature of the voyage' must have such a rational construction as to answer the main and leading purpose for which they were framed, namely, to give the mariner a fair intimation of the nature of the service in which he was about to engage himself when he signed the ship's articles." Dr. Lushington in the *Westmoreland* (1841), in 1 W. Rob., p. 228. As to descriptions of voyages, see the *Elizabeth* (1822), 1 Hag. 186, where the master inserted "or elsewhere" in articles; and *Countess of Harcourt* (1824), 1 Hag. 248. (On a contract to "V.-D. Land and elsewhere back to London," forfeiture of wages not incurred by refusal of seamen to work during voyage to Rotterdam.) *Frazer* v. *Hatton* (1857), 2 C. B. N. S. 512. (Articles which required the plaintiff, a seaman, to go "from Liverpool to the West Coast of Africa and back, or for a term not to exceed three years," not invalid under 13 & 14 Vict. c. 93 for being in the alternative; a provision, "the crew, if required, to be transferred to any other ship in the same employ," not invalid.)

(*i*) In *Annie Sherwood* (1865), 12 L. T. N. S. 582, the Court refused to inforce against a seaman a stipulation that he should be paid in United States currency, or its equivalent.

(7.) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt : (*k*)

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law : Provided that if the master of any ship belonging to any *British* possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade (*l*).

150. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements ; (that is to say),

(1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping master :

(2.) Such shipping master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature :

(3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master :

(4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping master duly appointed in the manner hereinbefore specified ; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen ; and

(*k*) See Boyd's Merchant Shipping Laws, p. 137, and 43 & 44 Vict. c. 16, s. 3.

(*l*) 39 & 40 Vict. c. 80, s. 5, as to obligation of shipowner to crew to use reasonable efforts to secure seaworthiness.

the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

165. Any seaman may bring forward evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof.

166. The master shall at the commencement of every voyage or engagement cause a legible copy of the agreement (omitting the signatures) to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding five pounds.

167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge (*m*) and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned (*n*).

Allotment of Wages.

168. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the Board of Trade (*o*).

169. The wife (*p*), or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of any seaman in whose favour an allotment note of part of the wages of such

(*m*) See *Robinett* v. *The Exeter* (1799), 2 C. Rob. 263, as to drunkenness, neglect of duty, and disobedience, being grounds of discharge. See as to forfeiture of wages, p. 560.

(*n*) Sec. 188.

(*o*) See Boyd's Merchant Shipping Laws, 155. This does not affect advance notes (43 & 44 Vict. c. 16, s. 2 (3)). As to payment of allotment notes, *McKune* v. *Joynson* (1858), 5 C. B. N. S. 218, where (Willes, J., dissenting) it was held that a person who had given for an advance note £3 15*s.* in cash, and £2 15*s.* in clothes, was entitled to sue on a note "to pay to any person who shall advance to R. H. on this agreement the sum of £6."

(*p*) *Meiklereid* v. *West* (1876), L. R. 1 Q. B. D. 428; 45 L. J. M. C. 91; 34 L. T. 353; 24 W. R. 713. (Appellant, registered owner of a ship, entered into a charter party with H. by which he demised a ship to H. for a stipulated period, and parted with all control over it. H. took possession of the ship, and appointed a master, who engaged the respondent's husband, and gave her an allotment note, requiring the charterer to pay her £6 out of her husband's wages. H. paid several instalments, but became insolvent: held that the appellant, though registered owner, was not liable to pay the arrears due under the note.)

seaman is made, may, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, and subject, as to the wife, to the provision hereinafter contained, sue for and recover the sums allotted by the note when and as the same are made payable, with costs, from the owner or any agent who has authorized the drawing of the note, either in the County Court or in the summary manner in which seamen are by this Act enabled to sue for and recover wages not exceeding fifty pounds; and in any such proceeding it shall be sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or by the master or some other authorized agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the Court, either by the official statement of the change in the crew caused by his absence made and signed by the master, as by this Act is required, or by a duly certified copy of some entry in the official log book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the Court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid: Provided that the wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereupon forfeit all right to further payments of any allotment of his wages which has been made in her favour.

Discharge and Payment of Wages.

Sections 170—176 deal with the discharge of seamen and payment of wages. Discharge of seamen in the United Kingdom from foreign-going ships is to be made, and such seamen are to receive their wages, in the presence of a shipping master (sect. 170). Every master before paying off or discharging any seaman shall deliver a full and true account of wages and all deductions (sect. 171, and 43 & 44 Vict. c. 116, s. 4). Upon the discharge of any seaman, or upon payment of his wages, the master shall sign and give a certificate of discharge in a form sanctioned by the Board of Trade (sect. 172; see also 43 & 44 Vict. c. 16, s. 4).

Sections 177 to 180 deal with the remittance of wages of seamen and apprentices to their relatives or other persons by means of money orders, and with the establishment of savings banks for seamen.

Legal Rights to Wages.

181. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

182. No seaman shall by any agreement forfeit his lien upon the ship,

or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative (*r*).

183. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim.

186. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the Court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

187. The master or owner of every ship shall pay to every seaman (*s*) his wages within the respective periods following; (that is to say), in the case of a home trade ship within two days after the termination of the agreement or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the Southern Whale Fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages.

(*r*) See s. 18 of 25 & 26 Vict. c. 63. This section is aimed against assignment of rights after as well as before salvage services rendered. The *Rosario* (1876), L. R. 2 P. D. 41; 46 L. J. A. 52. This section does not fetter the discretion of the Court as to such agreements; they are in the same position as they were before any legislation. The *Ganges* (1869), L. R. 2 A. & E. 370; see as to liens having priority over seamen's, the *Elin* (1882), 51 L. J. P. & A. 77.

(*s*) Master within this section, *Princess Helena* (1861), Lush. 191. The *Fleur de Lis* (1865), L. R. 1 A. & E. 49. (A master ought to furnish accounts before bringing his suit for wages and disbursements.)

Mode of Recovering Wages.

188. Any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in *Scotland* either before any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final.

189. No suit (*t*) or proceeding for the recovery of wages under the sum of fifty pounds shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Session in *Scotland*, or in any superior court of record in Her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court as aforesaid, or unless any justices acting under the authority of this Act refer the case to be adjudged by such Court, or unless neither the owner nor master is or resides (*u*) within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

190. No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as herein required and with the written consent of the master, or proves such ill-usage on the part of the master or by his authority as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but if any seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the Court hearing the case thinks reasonable.

191. Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages (*x*), and if in any proceeding in any Court

(*t*) See 24 Vict. c. 10, s. 10, and 31 & 32 Vict. c. 71, ss. 3 & 9. This section applies to master. The *Blakeney* (1859), Swa. 428.

(*u*) The *Blakeney*. (Place of occasional business not a residence within meaning of the section.)

(*x*) See as to this section the

of Admiralty or Vice-Admiralty touching the claim of a master to wages any right of set-off (*y*) or counter-claim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

Sections 192, 193 deal with relief to seamen's families out of poor rates.

Sections 194—204 deal with the wages and effects of deceased seamen. Masters are to take charge of or sell the effects of deceased seamen which are on board, and enter the same and a statement of the wages due and deductions, if any, in the official log (sect. 194). Such effects and wages are to be paid either to a consul or to a shipping master with full accounts (sect. 195).

Sections 205—213 deal with leaving seamen abroad. On discharge of seamen abroad by sale of ship or otherwise, and whenever the service of any seaman or apprentice belonging to a British ship terminates at any place out of Her Majesty's dominions, the master shall give to any such seaman or apprentice a certificate of discharge, and the seaman or apprentice is to be sent home at the expense of the owner (sect. 205). Forcing seamen on shore is made a misdemeanor (sect. 206). Distressed seamen found abroad may be relieved and sent home at the public expense (sect. 211) (*z*), and masters of British ships are compelled to take them (sect. 212).

Sections 214—220 deal with volunteering into the Navy. "Any seaman may leave his ship forthwith for the purpose of entering into the naval service of Her Majesty, and such leaving his ship shall not be deemed a desertion therefrom, and shall not render him liable to any punishment or forfeiture whatever" (sect. 214).

Provisions, Health, and Accommodation.

Sections 221—231 deal with provisions, health, and accommodation

221. Any three or more of the crew of any *British* ship may complain to any officer in command of any of Her Majesty's ships, or any *British* consular officer, or any shipping master, or any chief officer of customs,

Rajah of Cochin (1859), Sw. 473. At Common Law a master had no lien for wages. *Smith* v. *Plummer* (1818), 1 B. & Ald. 574; *Bristow* v. *Whitmore* (1861), 31 L. J. Ch. 467. This section extends to masters of foreign ships. *Milford* (1858), Swa. 362.

(*y*) The *Daring* (1868), L. R. 2 A. & E. 260. (A counterclaim by owner of cargo will not be entertained in a suit under this section.) The *Princess Helena* (1861), Lush. 190. (Owners of a ship refused to pay wages due to master, unless credited with certain salvage money received by master under an award, and kept by him for his share; the master refused to account for a subsequent voyage except on condition of a settlement for former voyage without reference to salvage money; payment of wages improperly withheld.)

(*z*) 18 & 19 Vict. c. 91, s. 16, and 25 & 26 Vict. c. 63, s. 22.

that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity; and such officer may thereupon examine the said provisions or water, or cause them to be examined, &c.

222. If the officer to whom any such complaint as last aforesaid is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

223. In the following cases; (that is to say),

(1.) If during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore);

(2.) If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use;

The seaman shall receive by way of compensation (*a*) for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages; (that is to say),

(1.) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding fourpence a day;

(2.) If his allowance is reduced by more than one-third of such quantity, eightpence a day;

(3.) In respect of such bad quality as aforesaid, a sum not exceeding one shilling a day:

But if it is shown to the satisfaction of the Court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require.

Every master shall keep on board proper weights and measures for the purpose of determining the quantities of provisions and articles served out (sect. 225). The Board of Trade and local marine boards may appoint inspectors of medicines to see that ships are properly

(*a*) The *Josephine* (1856), 1 Swa. 152. (Crew kept on short allowance owing to unexpected length of voyage, entitled to compensation.) As to Common Law right, *Couch* v. *Steel* (1854), 3 E. & B. 402; 23 L. J. Q. B. 121; see also 34 & 35 Vict. c. 110, s. 7, and 36 & 37 Vict. c. 85, s. 9.

provided (sect. 226). Section 228 provides for expenses of medical attendance and subsistence in case of illness, and of burial in case of death, being defrayed by owner (*b*).

If any seaman or apprentice whilst on board a ship states to the master that he desires to make complaint to a justice or consular officer or naval officer he is to be allowed to go ashore (sect. 232).

Protection of Seamen from Imposition.

Sections 233—238 are for the protection of seamen from imposition (*c*).

233. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court; and every payment of wages to seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment incumbrance, or arrestment thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

234. No debt exceeding in amount five shillings, incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

Discipline.

Sections 239—259 deal with discipline (*d*).

239. Any master of or any seaman or apprentice belonging to any British ship who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending (*e*) immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanour.

240. Any Court having Admiralty jurisdiction in any of Her Majesty's dominions may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or

(*b*) See *Organ* v. *Brodie* (1854), 10 Ex. 449; 24 L. J. Ex. 70. As to this section, *Secretary of Board of Trade* v. *Sundholm*, 4 Asp. 196.

(*c*) 43 & 44 Vict. c. 16.

(*d*) The sections relating to discipline apply to British ships only.

Leary v. *Lloyd* (1860), 6 Jur. N. S. 1246; 29 L. J. M. C. 194; 3 E. & E. 178.

(*e*) *Reg.* v. *Gardner* (1859), 1 F. & F. 669. (Act "tending to, &c," need not be followed by actual loss.)

more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the (*f*) removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new master in his stead; and may also make such order, and may require such security in respect of costs in the matter, as it thinks fit.

The Board of Trade may cancel or suspend certificates of master or mate in certain specified cases (sect. 242).

243. Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offences he shall be liable to be punished summarily as follows; (that is to say),

(1.) For desertion (*g*) he shall be liable [to imprisonment for any period

(*f*) The *Royalist* (1863), 32 L. J. P. 105. (An attempt to defraud by master justifies removal. The power under this section is not confined to cases mentioned in s. 239. See 25 & 26 Vict. c. 63, s. 23.)

(*g*) 43 & 44 Vict. c. 16, s. 10. DESERTION AND FORFEITURE.—*Limland* v. *Stephen* (1801), 3 Esp. 265. (No desertion or forfeiture of wages where a sailor cannot remain without personal danger from the violence of master.) The *Pearl* (1804), 5 C. Rob. 224. (Wages for a run to Hull forfeited by leaving ship in the Humber before arrival at Hull, though master consented.) *Delamainer* v. *Winteringham* (1815), 4 Camp. 186. (The whole wages due when vessel detained abroad by embargo, and when freight was earned, though plaintiff imprisoned on shore during embargo.) *Castilia* (1822), 1 Hag. Ad. 59. (No forfeiture for leaving vessel if provisions insufficient.) The *Bulmer* (1823), 1 Hag. 163. (Forfeiture of wages of a sailor, who, being allowed to perform services on shore, refuses to return.) The *Minerva* (1825), 1 Hag. 347. (No forfeiture of wages when seamen, taken upon a voyage to which they have not agreed, go ashore without leave.) *Train* v. *Bennet* (1827), 3 C. & P. 3. (No forfeiture when captain acted improperly, and set crew to work after refusal, so as to waive forfeiture, if any. "A master of a ship is not by his own conduct to induce a forfeiture of the men's wages;" Tenterden, C.J. The *Test* (1836), 3 Hag. 307. (No deduction of wages when seaman went ashore before delivery of cargo or legal discharge, his illness being a reasonable excuse.) The *Blake* (1839), 1 W. Rob. 73. (No forfeiture of wages for gross insubordination, the crew being intoxicated, and drinking not having been prevented by master and officers. Dr. Lushington dissented from Lord Stowell's dictum that "any cause which will justify a master in discharging a seaman during the voyage, will also deprive the seaman of his wages.") The *Westmoreland* (1841), 1 W. Rob. 216. (No desertion when sailors, being of opinion that they were not bound to proceed to Holland, as ordered, went on shore to seek advice.) *Edward* v. *Trevellick* (1854), 4 E. & B. 59. (No desertion when sailor left, having just and reasonable cause to fear that he would be punished with great and unreasonable cruelty.) *Button* v. *Thompson* (1869), L. R. 4 C. P. 330. (Plaintiff, a mate on defendant's vessel, engaged to serve on voyage "not expected to exceed twelve months, under articles in pursuance of s. 104;" amount of wages per calendar month £5 10*s.*; guilty of drunkenness and insubordination on voyage, and left behind at Sulina owing to his negligence; no desertion: held by Byles and Montague

not exceeding twelve weeks, with or without hard labour] (*h*), and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him :

(2.) For neglecting or refusing, without reasonable cause, to join his ship, or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty not amounting to desertion or not treated as such by the master, he shall be liable [to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the Court] (*i*), to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute :

(3.) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay :

(4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay :

(5.) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute :

Smith, J.J., that he was entitled to receive wages up to time of being left behind ; Brett, J., dissenting.)

(*h*) Repealed by 43 & 44 Vict. c. 16, s. 12.

(*i*) Repealed by 43 & 44 Vict. c. 16, s. 12.

(6.) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour :

(7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour :

(8.) For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour :

(9.) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage ; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

Entry of offences enumerated in sect. 243 shall be made in the official log-book, and the offender shall be furnished with a copy of the entry, or it shall be read over to him, and his reply, if any, shall also be entered (sect. 244). The master, or mate, or owner may apprehend deserters without warrant (sect. 246) (*k*), and deserters may be sent on board in lieu of being imprisoned (sect. 247) (*l*).

Sects. 260—266 provide for the summoning of Naval Courts on the high seas or abroad. Such courts have power to supersede the master ; to discharge a seaman ; to forfeit wages ; to decide disputes as to wages, fines, or forfeitures ; to direct costs incurred by master or owner in procuring the imprisonment of a seaman or apprentice to be paid out of wages, &c. (sect. 263).

Sects. 267—270 deal with crimes committed on the high seas or abroad. All offences committed by British seamen abroad, either ashore or afloat, are within Admiralty jurisdiction.

Registration of and Returns Respecting Seamen.

Sects. 271—279 deal with registration and returns respecting seamen. For all ships lists are to be made out containing certain particulars, and, among others—

(3.) The Christian names, surnames, ages, and places of birth of all the crew, including the master and apprentices ; their

(*k*) Sects. 246 and 248, repealed by 43 & 44 Vict. c. 16, s. 12.

(*l*) See 43 & 44 Vict. c. 16, ss. 10 and 12.

qualities on board, their last ships, or other employments, and the dates and places of their joining the ship :

(4.) The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof :

(5.) The names of any members of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof :

(6.) The wages due to any of the crew who have died, at the time of their respective deaths :

(7.) The clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold (sect. 273).

Sects. 280—287 deal with official logs. They are to be kept in forms sanctioned by the Board of Trade (sect. 280). The entries required in the official log include every legal conviction of any member of the crew, every offence committed by any member of the crew for which it is intended to prosecute or enforce a forfeiture, punishments, conduct of each of crew, illness or injury happening to every member of the crew, names of seamen or apprentices quitting the ship, amount of wages due to men entering the navy, amount of wages due to deceased seamen, sale of deceased men's effects (282).

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30 & 31 VICT. c. 124 (1867).

An Act to amend "The Merchant Shipping Act, 1854."

Sect. 4. (1.) The Board of Trade shall from time to time issue and cause to be published scales of medicines and medical stores suitable for different ships and voyages, and shall also prepare or sanction a book or books containing instructions for dispensing the same : (2.) The owners of every ship navigating between the United Kingdom and any place out of the same shall provide and cause to be kept on board such ship a supply of medicines and medical stores in accordance with the scale appropriate to the said ship, and also a copy of the said book or of one of the said books containing instructions : (3.) No lime or lemon juice shall be deemed fit and proper to be taken on board any such ship, for the use of the crew or passengers thereof, unless the same has been obtained from a bonded warehouse for and to be shipped as stores, &c.

7. Whenever it is shown that any seaman or apprentice who is ill has, through the neglect of the master or owner, not been provided with

proper food and water according to his agreement, or with such accommodation, medicines, medical stores, or anti-scorbutics as are required by the principal Act or by this Act, then, unless it can be shown that the illness has been produced by other causes, the owner or master shall be liable to pay all expenses properly and necessarily incurred by reason of such illness (not exceeding in the whole three months' wages), &c.

8. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that such illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of such illness incapable of performing his duty.

9. The following rules shall be observed with respect to accommodation on board British ships (that is to say),

(1.) Every place in any ship occupied by seamen or apprentices, and appropriated to their use, shall have for every such seaman or apprentice a space of not less than seventy-two cubic feet, and of not less than twelve superficial feet, measured on the deck or floor of such place:

(2.) Every such place shall be such as to make the space aforesaid available for the proper accommodation of the men who are to occupy it, shall be securely constructed, properly lighted and ventilated, properly protected from weather and sea, and as far as practicable properly shut off and protected from effluvium which may be caused by cargo or bilge water.

10. (1.) At any port where there is a local marine board the local marine board, and at other ports in the United Kingdom the Board of Trade, may appoint a medical inspector of seamen. (2.) Such medical inspector of seamen shall, on application by the owner or master of any ship, examine any seaman applying for employment in such ship, and shall give to the superintendent of the mercantile marine office a report under his hand stating whether such seaman is in a fit state for duty at sea, &c.

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34 & 35 VICT. c. 110 (1871).

An Act to amend the Merchant Shipping Acts.

Masters and Seamen (Part III. of "Merchant Shipping Act, 1854").

Sect. 7. Whenever in any proceeding against any seaman or apprentice belonging to any ship for desertion, or for neglecting or refusing to join or to proceed to sea in his ship, or for being absent from or quitting the same without leave, it is alleged by one-fourth of the seamen belonging to such ship, or, if the number of such seamen exceed twenty,

by not less than five such seamen, that such ship is by reason of unsea worthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in such ship is insufficient, the Court having cognizance of the case shall take such means as may be in their power to satisfy themselves concerning the truth or untruth of such allegation, and shall for that purpose receive the evidence of the person or persons making the same and shall have power to summon any other witnesses whose evidence they may think it desirable to hear; the Court shall thereupon, if satisfied that the allegation is groundless, proceed to adjudicate, but if not so satisfied shall cause such ship to be surveyed.

Provided that no seaman or apprentice charged with desertion, or with quitting his ship without leave, [shall have any right to apply for a survey under this section unless previously to his quitting his ship he has complained to the master of the circumstances so alleged in justification, &c.

8. Any naval court may, if they think fit, direct a survey of any ship which is the subject of an investigation held before them, &c.

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36 & 37 VICT. c. 85 (1873).

An Act to amend the Merchant Shipping Acts.

Masters and Seamen (Part III. of "Merchant Shipping Act, 1854").

Sect. 9. If a seaman or apprentice belonging to any ship is detained on a charge of desertion or any kindred offence, and if upon a survey of the ship being made under section seven of the "Merchant Shipping Act, 1871," it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention as the Court having cognizance of the proceedings may award.

39 & 40 VICT. c. 80 (1876).

An Act to amend the Merchant Shipping Acts.

Unseaworthy Ships.

Sect. 5. In every contract of service, expressed or implied, between the owner of a ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the same: Provided, that nothing in this section shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending thereof to sea is reasonable and justifiable (*m*).

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43 & 44 VICT. c. 16.

An Act to amend the law relating to the Payment of Wages and Rating of Merchant Seamen. [2nd August, 1880.]

Sect. 2. (1.) After the first day of August, one thousand eight hundred and eighty-one, any document authorising or promising, or purporting to authorise or promise, the future payment of money on account of a seaman's wages conditionally on his going to sea from any port in the United Kingdom, and made before those wages have been earned, shall be void.

(2.) No money paid in satisfaction or in respect of any such document shall be deducted from a seaman's wages, and no person shall have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

(3.) Nothing in this section shall affect any allotment note made under the Merchant Shipping Act, 1854.

3. (1.) Every agreement with a seaman which is required by the

(*m*) No such implied contract at Common Law. *Couch* v. *Steel* (1854), 3 E. & B. 402; 23 L. J. Q. B. 121.

Merchant Shipping Act, 1854, to be made in the form sanctioned by the Board of Trade shall, if the seaman so require, stipulate for the allotment of any part not exceeding one-half of the wages of the seaman in favour of one or more of the persons mentioned in section one hundred and sixty-nine of the Merchant Shipping Act, 1854, as amended by this section.

(2.) The allotment may also be made in favour of a savings bank, and in that case shall be in favour of such persons and carried into effect in such manner as may be for the time being directed by regulations of the Board of Trade, and section one hundred and sixty-nine of the Merchant Shipping Act, 1854, shall be construed as if the said persons were named therein.

(3.) The sum received in pursuance of such allotment by a savings bank shall be paid out only on an application made, through a superintendent of a mercantile marine office or the Board of Trade, by the seaman himself, or, in case of death, by some person to whom the same might be paid under section one hundred and ninety-nine of the Merchant Shipping Act, 1854.

(4.) A payment under an allotment note shall begin at the expiration of one month, or, if the allotment is in favour of a savings bank, of three months, from the date of the agreement, or at such later date as may be fixed by the agreement, and shall be paid at the expiration of every subsequent month, or of such other periods as may be fixed by the agreement, and shall be paid only in respect of wages earned before the date of payment.

(5.) For the purposes of this section "savings bank" means a savings bank established under one of the Acts mentioned in the first schedule to this Act.

4. In the case of foreign-going ships—

(1.) The owner or master of the ship shall pay to each seaman on account, at the time when he lawfully leaves the ship at the end of his engagement, two pounds, or one fourth of the balance due to him, whichever is least; and shall pay him the remainder of his wages within two clear days (exclusive of any Sunday, fast day in Scotland, or bank holiday) after he so leaves the ship.

(2.) The master of the ship may deliver the account of wages mentioned in section one hundred and seventy-one of the Merchant Shipping Act, 1854, to the seaman himself at or before the time when he leaves the ship instead of delivering it to a superintendent of a mercantile marine office.

(3.) If the seaman consents, the final settlement of his wages may be left to the superintendent of a mercantile marine office under the regulations to be made by the Board of Trade, and the receipt of the superintendent shall in that case operate as a release by the seaman under section one hundred and seventy-five of the Merchant Shipping Act, 1854.

(4.) In the event of the seaman's wages or any part thereof not being paid or settled as in this section mentioned, then, unless the delay is due to the act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof.

(5.) Where a question as to wages is raised before the superintendent of a mercantile marine office between the master or owner of a ship, and a seaman or apprentice, if the amount in question does not exceed five pounds, the superintendent may adjudicate, and the decision of the superintendent in the matter shall be final; but if the superintendent is of opinion that the question is one which ought to be decided by a court of law he may refuse to decide it.

7. A seaman shall not be entitled to the rating of A.B., that is to say, of an able-bodied seaman, unless he has served at sea for four years before the mast, but the employment of fishermen in registered decked fishing vessels shall only count as sea service up to the period of three years of such employment; and the rating of A.B. shall only be granted after at least one year's sea service in a trading vessel in addition to three or more years' sea service on board of registered decked fishing vessels.

Such service may be proved by certificates of discharge, by a certificate of service from the Registrar General of Shipping and Seamen (which certificate the registrar shall grant on payment of a fee not exceeding sixpence), and in which shall be specified whether the service was rendered in whole or in part in steam ship or in sailing ship, or by other satisfactory proof.

Nothing in this section shall affect a seaman who has been rated and has served as A. B. before the passing of this Act.

8. Where a proceeding is instituted in or before any court in relation to any dispute between an owner or master of a ship and a seaman or apprentice to the sea service, arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court, if, having regard to all the circumstances of the case, they think it just so to do, may rescind any contract between the owner or master and the seaman or apprentice, or any contract of apprenticeship, upon such terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court can exercise independently of this section.

For the purposes of this section the term "court" includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates.

9. It shall be lawful for the sanitary authority of any seaport town to pass byelaws for the licensing of seamen's lodging-houses, for the periodical inspection of the same, for the granting to the persons to whom such licences are given, the authority to designate their houses as

seamen's licensed lodging-houses, and for prescribing the penalties for the breach of the provisions of the byelaws: Provided always, that no such byelaws shall take effect till they have received the approval of the Board of Trade.

10. The following provisions shall from the commencement of this Act have operation within the United Kingdom:

A seaman or apprentice to the sea service shall not be liable to imprisonment for deserting or for neglecting or refusing without reasonable cause to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of his ship's sailing from any port, or for absence at any time without leave and without sufficient reason from his ship or from his duty.

Whenever either at the commencement or during the progress of any voyage any seaman or apprentice neglects or refuses to join or deserts from or refuses to proceed to sea in any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband, or consignee may, with or without the assistance of the local police officers or constables, who are hereby directed to give the same, if required, convey him on board: Provided that if the seaman or apprentice so requires he shall first be taken before some court capable of taking cognizance of the matters to be dealt with according to law; and that if it appears to the court before which the case is brought that the seaman or apprentice has been conveyed on board or taken before the court on improper or insufficient grounds, the master, mate, owner, ship's husband, or consignee, as the case may be, shall incur a penalty not exceeding twenty pounds, but such penalty, if inflicted, shall be a bar to any action for false imprisonment.

If a seaman or apprentice to the sea service intends to absent himself from his ship or his duty, he may give notice of his intention, either to the owner or to the master of the ship, not less than forty-eight hours before the time at which he ought to be on board his ship; and in the event of such notice being given, the court shall not exercise any of the powers conferred on it by section two hundred and forty-seven of the Merchant Shipping Act, 1854.

Subject to the foregoing provision of this section, the powers conferred by section two hundred and forty-seven of the Merchant Shipping Act, 1854, may be exercised, notwithstanding the abolition of imprisonment for desertion and similar offences, and of apprehension without warrant.

Nothing in this section shall affect section two hundred and thirty-nine of the Merchant Shipping Act, 1854.

11. The thirteenth section of the Employers and Workmen Act, 1875 (*n*), shall be repealed in so far as it operates to exclude seamen and

(*n*) See Chapter XIV.

apprentices to the sea service from the said Act, and the said Act shall apply to seamen and apprentices to the sea service accordingly; but such repeal shall not, in the absence of any enactment to the contrary, extend to or or affect any provision contained in any other Act of Parliament passed, or to be passed, whereby workman is defined by reference to the persons to whom the Employers and Workmen Act, 1875, applies.

12. The enactments described in the Second Schedule to this Act shall be repealed as from the commencement of this Act within the United Kingdom.

Provided that this repeal shall not affect—

(1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or

(2.) Any right or privilege acquired or any liability incurred before the commencement of this Act, under any enactment hereby repealed; or

(3.) Any imprisonment, fine, or forfeiture, or other punishment incurred or to be incurred, in respect of any offence committed before the commencement of this Act, under any enactment hereby repealed; or

(4.) The institution or prosecution to its termination of any investigation or legal proceeding, or any other remedy for prosecuting any such offence, or ascertaining, enforcing, or recovering any such liability, imprisonment, fine, forfeiture, or punishment as aforesaid, and any such investigation, legal proceeding, and remedy may be carried on as if this repeal had not been enacted.

SCHEDULES.

FIRST SCHEDULE.

Chapter.	Savings Banks.
24 & 25 Vict. c. 14. . . .	Post Office Savings Banks.
26 & 27 Vict. c. 87. . . .	Trustee Savings Banks.
17 & 18 Vict. c. 104, s. 180. .	Seamen's Savings Banks.
19 & 20 Vict. c. 41 . . .	

SECOND SCHEDULE.

(17 & 18 VICT. c. 104, in part.)

The Merchant Shipping Act, 1854,
in part : namely,

In section two hundred and forty-three, sub-section (1), the wor
" to imprisonment for any period not exceeding twelve weeks with or without hard labour ; and also."

In section two hundred and forty-three, sub-section (2), the words " to imprisonment for any period not exceeding ten weeks with or without hard labour, and also at the discretion of the court."

Section two hundred and forty-six.

In section two hundred and forty-seven the words " instead of committing the offender to prison ; "

And section two hundred and forty-eight.

CHAPTER XII.

ACTS RELATING TO ARBITRATION.

5 GEO. IV., c. 96 (1824).

An Act to consolidate and amend the Law relative to the Arbitration of Disputes between Master and Men.

Sect. 2. And be it further enacted that the following subjects of dispute arising between masters and workmen, or between workmen and those employed by them, in any trade or manufacture in any part of the United Kingdom of Great Britain and Ireland, may be settled and adjusted in manner hereafter mentioned; that is to say, disagreements respecting the price to be paid for work done, or in the course of being done, whether such disputes shall happen or arise between them respecting the payment of wages as agreed upon, or the hours of work as agreed upon, or any injury or damage done or alleged to have been done to the work, or respecting any delay or supposed delay in finishing the work, or the not finishing the work in a good and workmanlike manner, or according to any contract, or to bad materials; cases where the workmen are to be employed to work any new pattern which shall require them to purchase any new implements of manufacture, or to make any alteration upon the old implements for the working thereof, and the masters and workmen cannot agree upon the compensation to be made to such workmen for or in respect thereof; disputes respecting the length, breadth, or quality of pieces of goods, or, in the case of cotton manufacture, the yarn thereof, or the quantity and quality of the wool thereof; disputes respecting the wages or compensation to be paid for pieces of goods that are made of any great or extraordinary length; disputes in the cotton manufacture respecting the manufacture of cravats, shawls, policat, romal, and other handkerchiefs, and the number to be contained in one piece of such handkerchiefs; disputes arising out of, for, or touching the particular trade or manufacture, or contracts relative thereto, which cannot be otherwise mutually adjusted and settled; disputes between masters and persons engaged in sizing or ornamenting goods; but nothing in this Act contained shall authorize any justice or justices acting as hereinafter mentioned to establish a rate of wages or price of labour or workmanship at which the workmen shall in future be paid, unless with the mutual consent of both master and workman: Provided

always, that all complaints by any workman as to bad materials shall be made within three weeks of his receiving the same; and all complaints arising from any other cause shall be made within six (*a*) days after such cause of complaint shall arise.

3. And be it further enacted, that whenever such subjects of dispute shall arise as aforesaid, it shall be lawful (*b*) for the master and workman, or either of them, to demand and have an arbitration or reference thereof in manner following; that is to say, where the party complaining and the party complained of shall come before or agree by any writing under their hands to abide by the determination of any justice of the peace (*c*) or magistrate of any county, riding, division, stewartry, barony, city, burgh, town, or place, within which the parties reside (*d*), it shall be lawful for any justice of the peace or magistrate to hear and finally determine, in a summary manner, the matter in dispute between such parties; but if such parties shall not come before or so agree to abide by the determination of such justice of the peace or magistrate, then it shall be lawful for any such justice or magistrate, and such justice of the peace or magistrate is hereby required, on complaint made before him, and proof by the examination of the party making such complaint, that application has been made to the person or persons against whom such cause of complaint has arisen, or his, her, or their agent or agents, if such dispute has arisen with such agent or agents, to settle such dispute, and that the same has not been settled upon such complaint being made, or where the dispute relates to a bad warp, that such cause of complaint has not been done away with within forty-eight hours after such application, to summon before him such person or persons, or agents or agents, on some day not exceeding three days, exclusive of Sunday, after the making such complaint, giving notice to the person making such complaint of the time and place appointed in such summons for the attendance of such person or persons, agent or agents as aforesaid; and if at such time and place the person or persons so summoned shall not appear by himself, herself, or themselves, or send some person on his, her, or their behalf, to settle such dispute, or, appearing, shall not do away with such cause of complaint, then and in such case it shall be lawful for such justice, and he is hereby required, at the request of either of such parties, to nominate arbitrators or referees for settling the matters in dispute; and such justice shall then and there at such meeting propose not less than four nor more than six persons, one half of whom shall be master manufacturers, or agents or foremen of some master manufacturer, and the

(*a*) Fourteen days by 1 & 2 Vict. c. 67.

(*b*) See *Crisp* v. *Bunbury* (1832) 8 Bing. 394; 1 M. & S. 646. See also *Julius* v. *Bishop of Oxford*, L. R. 5, Ap., 214.

As to disputes about seamen's wages, Merchant Shipping Act, 1854, s. 173.

(*c*) By 7 Will. IV. and 1 Vict. c. 67. s. 3, the term "justice" includes "magistrate."

(*d*) See 7 Will. IV. & 1 Vict. c. 67, s. 2.

other half of whom shall be workmen in such manufacture; such respective persons residing in or near to the place where such dispute shall have arisen; out of which master manufacturers, agents, or foremen, the master engaged in such dispute, or his agent, shall choose one, and out of which workmen so proposed the workman or his agent shall choose another, who shall have full power to hear and finally determine such dispute.

4. And be it further enacted that in case any or either of the persons so proposed by any such justice shall refuse or delay to accept such arbitration, or accepting shall not act therein, within two days after such nomination, the justice shall proceed to name another or other persons of the descriptions aforesaid, in the room of the person so refusing as aforesaid to be arbitrator or arbitrators in the place of any such arbitrator or arbitrators so refusing or delaying to accept, or who shall not act; and in every case of a second nomination the arbitrators shall meet within twenty-four hours after the application for the same, and at the same place at which the meeting of the referees first named was appointed, or at some other convenient place, as the justice may appoint; and the expense of every such application for the appointment of a second referee shall be borne and defrayed by the party through whose default, or the default of whose referee, such application is rendered necessary; and the justice making such second appointment shall certify the same in the Form for that purpose hereafter set forth, or in some other Form to the like effect; and in every case where a second arbitrator shall be appointed as aforesaid, and such second arbitrator shall not attend at the same time and place appointed for settling the matters in dispute, it shall be lawful for the other arbitrator, at such time and place, to proceed by himself to the hearing and determining of the same matters in dispute; and in such case the award of such sole arbitrator shall be final and conclusive as to all matters in dispute submitted to such arbitrator, without being subject to review, appeal, or suspension.

5. And be it further enacted that the arbitrators or referees being so nominated as aforesaid, the said justice shall thereupon appoint a place of meeting according to the directions of this Act, and also a day for the meeting, notice of which nomination, and of the day of meeting, shall thereupon be given by such justice to the persons so nominated arbitrators or referees, and to any party to any such dispute, who may not have attended the meeting before such justice as aforesaid; which appointment shall be by such justice certified in the Form following, or in some other Form to the like effect; that is to say:

I , one of the justices of the peace acting for , do hereby certify that and are duly nominated referees to settle the matters in difference between of , master manufacturer [*or* agent *or* foreman, *as the case may be*], and of

, weaver [*or otherwise as the case may be*], pursuant to an Act passed in the fifth year of the reign of his present Majesty ; and that the said referees are hereby directed to meet at on the day of at of the clock in the forenoon [*or* afternoon, *as the case may be*].

A. B.

I , one of the justices of the peace acting for , do hereby certify that the above and [*or* one of them, *as the case may be*], having refused or delayed to act in the above-mentioned reference, and [*or only, as the case may be*], are [*or* is] by me duly nominated referees [*or* referee], together with the above-named [*or*], to settle the matters in difference between the above-named and ; and the said or together with the said [*or* the said or , *as the case may be*], are directed to meet at the place above mentioned, on the day of in the year of our Lord at of the clock in the forenoon [*or* afternoon, *as the case may be*].

A. B.

And the persons so appointed as aforesaid shall hear and examine the parties and their witnesses, and determine such dispute within two days after such nomination, exclusive of Sundays ; and the determination of such arbitrators shall be final and conclusive.

6. And be it further enacted, That in all cases where complaints are made respecting bad warps or utensils by workmen, the place of meeting of the referees shall be at or as near as may be to the place where the work shall be carrying on ; and in all other cases at or as near as may be to the place or places where the work has been given out.

7. (If any person so complaining shall not attend, or send some person on his or her behalf, the justice of the peace shall thereupon nominate a person for him out of such persons so proposed as aforesaid).

8. And be it further enacted, That the said arbitrators and referees shall meet at the time and place fixed by the justice of the peace by whom such referees were appointed, and shall, by inspection of the work in regard to which the dispute may have arisen, by hearing and examining the parties, or any other persons on their behalf, or that attend to give evidence respecting the matters in dispute, upon oath (which the said arbitrators and referees are hereby empowered to administer), or otherwise, or by otherwise ascertaining the true state of the case, in such manner as to such arbitrators and referees shall appear necessary, proceed to determine the matter or matters in dispute referred to them ; and the award to be made by such arbitrators and referees shall be final and conclusive between the parties, without being subject to review or challenge by any court or authority whatsoever.

9. It shall be lawful for any arbitrator or arbitrators, referee or referees, and he or they are hereby authorised and required, at the request in writing of any of the parties to issue his or their summons to any witness or witnesses to appear and give evidence before such arbitrator or arbitrators, referee or referees, &c. If any person so summoned to appear as a witness as aforesaid shall not appear, &c., it shall be lawful for any one or more of His Majesty's justices of the peace, &c., and they are hereby authorised, &c., by warrant under the hands of any such justice or justices to commit any such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of any such justice or justices, there to remain, without bail or mainprize, for any time not exceeding two calendar months, nor less than seven days, &c.

10. And be it further enacted, That in case such arbitrators and referees so appointed cannot agree upon and decide such matter or matters in dispute so referred as aforesaid, or shall not make and sign their award within three days after the date of the order of such justice, certifying their appointment, then the said arbitrators and referees shall without delay go before the justice by whom they were appointed; and, in case of his absence or indisposition, before any other of His Majesty's justices of the peace acting in and for the county, stewartry, riding, division, baronry, city, burgh, town, liberty, or place, and residing nearest to the place where the meeting to settle such dispute shall have taken place, and shall state to such justice or justices who may be present the points in difference between them the said arbitrators and referees, which points in difference the said justice or justices shall and is and are hereby authorised and required to hear and determine upon the statement of the arbitrators and referees; and the said justice or justices is and are hereby directed and required to settle and determine the matter in dispute with all possible dispatch, and in all cases within the space of two days after the expiration of the time hereby allowed to the arbitrators and referees to make and sign their award; and the determination of such justice or justices shall be final and conclusive between the parties so differing as aforesaid, without being subject to review or challenge by any court whatsoever.

11. And be it further enacted, That if either arbitrator or referee shall neglect or refuse to go before such justice of the peace in the manner herein directed, it shall and may be lawful for such justice, after summoning the arbitrators to attend him, to determine the matter or matters in dispute, upon the statement and representation of either of the arbitrators who shall come before him.

12. Provided always, and be it further enacted, That no justice of the peace, being also a master manufacturer or agent, shall act as such justice under this Act.

13. Provided always, and be it further enacted, That as well in all such cases of dispute as aforesaid as in all other cases, if the parties

mutually agree that the matter in dispute shall be arbitrated and determined in a different mode to the one hereby prescribed, such agreement shall be valid, and the award and determination thereon final and conclusive between the parties and the same proceedings of distress, sale, and imprisonment, as hereafter mentioned, shall be had towards enforcing such award, (by application to any justice of the peace of the county, stewartry, riding, division, barony, city, town, burgh, or place within which the parties shall reside), as are by this Act prescribed for enforcing awards made under and by virtue of its provisions.

14. Provided always, and be it further enacted, That where any work shall have been delivered to any workman by the agent or servant of any master or masters, to be when finished delivered to such agent or servant; and also where two or more persons shall carry on the business of such manufacture as partners, in every such case respectively the like proceedings shall and may be had and made against such agent, servant, or any partner, and shall be as effectual as if the same had been had and made against the principal, or all the partners; and all the said persons respectively shall obey the award made thereupon, and all such order or orders as shall be made by the said justice or justices in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for refusing or delaying to abide by or perform the same, as if the proceedings had been had against the principal, or against all the partners.

15. And be it further enacted, That it shall be lawful in all cases for any master or workman, by writing under his hand, to authorize any person to act for him in submitting to arbitration and attending arbitrators or justices touching the matter of any arbitration.

16. Provided a master or masters shall become or be bankrupt, or any assignment of his or their estate or effects shall have been made under the said bankruptcy, or otherwise by deed or in law, the factor or trustee upon, or the assignee or assignees of such estate or effects shall be liable to the proceedings authorized by this Act against the master or masters, as fully as the master or masters was or were before the bankruptcy or assignment, &c.

17. Where any married woman or infant under the age of twenty-one years shall have cause of complaint in any of the cases provided for by this Act, &c., such complaint may be lodged, and all further proceedings thereupon had, by and in the name of the husband of such married woman, and of the father, or, if dead, of the mother, or if on the death of both parents, of any of the kindred of any such infant, or of the surety or sureties in any indenture of apprenticeship of any such infant, being an apprentice, or of any person nominated by such infant, if he or she shall not have parent, kindred, or surety, &c.

18. And be it further enacted, That with every piece of work given out by the manufacturer to a workman to be done, there shall (if both parties are agreed) be delivered a note or ticket, in such form as the said

parties shall mutually agree upon ; and which said note or ticket, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein or respecting the same.

19. And be it further enacted, That a duplicate of every such note or ticket shall be made and kept by the master or agent delivering the same, which duplicate shall be evidence of all the matters and things therein contained, in case the workman shall not produce to the arbitrators, or the said justice, as the case may be, the said note or ticket so delivered to him with the said work.

20. And be it further enacted, That it shall not be allowable to any manufacturer, who shall have received into his possession any article without objection made within twenty-four hours, by himself or his clerk or foreman, afterwards to make any complaint on account of work so received.

21. Provided always, and be it further enacted, That if the parties by and between whom the said reference shall take place as aforesaid, shall think it expedient, or be desirous to extend the time hereby limited for the making the award or umpirage, it shall and may be lawful for them to extend the same accordingly by endorsement, according to the form in the schedule hereunto annexed, on the back of the order of the justice of peace, certifying the appointment of the referees, to be signed by both of them in the presence of one or more credible witness or witnesses.

22. And be it further enacted, That the award or umpirage to be made upon any reference demanded under this Act shall and may be drawn up and written at the foot or upon the back of the said order, certifying the appointment of the referees, according to the form in the schedule hereunto annexed.

23. And be it further enacted, That upon fulfilment of the award or umpirage, the same shall be acknowledged by the party in whose behalf the same was made, by an acknowledgment at the foot of the said award, in the form of the schedule hereunto annexed, which, with the award, shall thereupon be delivered to the party fulfilling the same.

24. And be it further enacted, That if any party shall refuse or delay to fulfil an award under this Act, for the space or term of two days after the same shall have been reduced into writing, it shall be lawful for any such justice as aforesaid, on the application of the party aggrieved, and he is hereby required by warrant under his hand according to the form of the schedule hereunto annexed, or in some other form to the like effect, to cause the sum and sums of money directed to be paid by any such award to be levied by distress and sale of any goods and chattels of the person or persons liable to pay the same, together with all costs and charges attending such distress and sale, such sale to take place within such time, not exceeding five days, as the said justice shall think proper ; and the overplus, if any, to arise by such sale, to be rendered to the owners of the goods and chattels distrained ; and in case it shall appear

by any return to such warrant that no sufficient distress can be readily had, which return may be in the form contained in the schedule hereunto annexed, or in some other form to the like effect, it shall be lawful for any such justice as aforesaid, and he is hereby required by warrant under his hand according to the form of the schedule hereunto annexed, or in some other form to the like effect, to commit the person or persons so liable as aforesaid to the common gaol, or some house of correction within his or their jurisdiction, there to remain without bail for any term not exceeding three months.

25. "And whereas cases may occur where the recovery of such sum or sums of money by distress and sale of goods and chattels of the defaulter may appear to the justice or justices of the peace by whom the warrant is to be issued to be attended with consequences ruinous or in an especial manner injurious to the defaulter and his family;" to prevent which consequences, be it further enacted, That the said justice or justices, in all such cases, shall withhold such warrant, and commit the defaulter to the common gaol or some house of correction within his or their jurisdiction, there to remain without bail for any time not exceeding three months; such commitment to be in the form or to the effect of the form in the schedule to this Act annexed.

26. And be it further enacted, that where any person shall be committed to prison for refusing or delaying to fulfil an award as aforesaid, and such person shall, at any time during the period of his or her imprisonment, pay to the governor or keeper of the prison the full amount of the sum awarded, with all reasonable expenses incurred through such refusal or delay, it shall be lawful for such governor or keeper of such prison, and he is hereby required forthwith to discharge such person from his custody.

27. And be it further enacted, That the justice or justices by whom any person or persons shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause the warrant or order for such commitment to be drawn up in the form or to the effect set forth in the schedule to this Act.

28. And be it further enacted, That no appeal or certiorari shall lie against any proceedings under this Act.

29. And be it further enacted, That no proceedings under this Act shall be invalid for want of form.

30. (*c*) And be it further enacted, That the following and no higher fees shall be allowed to be taken for any proceeding under this Act; (that is to say,) To the clerk of the justice or justices: for each summons, two pence; for every oath or affirmation, three pence; for drawing and entering the order, four pence; for every warrant, six pence.

To the constable or other peace officer:—For service of summons or order, fourpence; for executing warrant of distress and sale of goods,

(*c*) See 40 & 41 Vict. c. 43.

one shilling; for custody of goods distrained, per diem, three pence; for every mile he shall travel, three pence; for every caption, six pence. And a table of fees, signed by the clerk to such justice or justices, shall be hung up in every place where any general or quarter sessions, or petty or other sessions of the peace shall be held.

31. And be it further enacted, That all costs, time, and expenses attending the application to justices, to be made under this Act, and of the arbitration pursuant thereon, shall be settled by the arbitrators or arbitrator by whom such dispute shall be settled; and where the same shall be determined by any justice of the peace, pursuant to this Act, then the costs, time, and expenses aforesaid shall be settled by such justice; and where the arbitrators appointed as aforesaid cannot agree as to the costs, time, and expenses to be allowed, the same shall be settled by the justice or justices of the peace by whom the said arbitrators were named, and in case of his absence or indisposition, by any justice of the peace for the same county, stewartry, riding, division, barony, city, burgh, liberty, town, or place nearest to the place at which the arbitrators met to settle the dispute: Provided always, that no master manufacturer, his foreman or agent, shall in any case be allowed for costs, time or expenses, by the said justice or justices, unless it shall appear to him or them that the proceedings of the workmen were vexatious and oppressive.

32. Provided always, and be it enacted, That every agreement, submission, award, ticket, matter, or thing, under and by virtue of this Act, or relating to any other mode of arbitration as aforesaid, shall and may be drawn up and written upon unstamped paper.

33. (Actions to be brought within six calendar months.)

34. (In any action for anything done under this Act, the general issue may be pleaded.)

35. (Nothing in this Act shall extend or be construed to extend to repeal, abridge, annul, or make void any statute not repealed by this Act.)

SCHEDULE.

Form of the Award to be written at the foot or upon the back of the order of the justices of peace certifying the reference.

We and [*name and describe the referees*], the referees appointed to settle the matters in dispute between the parties within named [*or,* one of the referees so appointed; *or,* the other referee appointed having failed to attend; *or,* the justice, *as the case may be*], do hereby adjudge and determine that [*here set forth the determination; to which the referee or referees or justice, as the case may be, shall subscribe their names.*]

Form of Endorsement, extending the time limited for making the award.

We, and , parties to the within reference, do hereby agree to extend the same to the day of inclusive.

Witness our hands this day of . A. B.

Witness, C. D.

Form of Acknowledgment of fulfilment of the Award to be written at the foot or on the back thereof.

I, , do hereby acknowledge that the above award hath been fulfilled by , who is hereby discharged of the same.

Witness my hand this day of .

Witness, A. B

Form of the Oath to be administered by the arbitrators or justice to the parties and witnesses under this Act.

The evidence that you shall give before us, the arbitrators appointed by and [*the parties*] to determine the matters in difference between them, under and by virtue of an Act passed in the fifth year of the reign of King George the Fourth, intituled An Act [*state the title of this Act*], shall be the truth, the whole truth, and nothing but the truth.

So help you GOD.

Form of Commitment of a person summoned as a witness before the Arbitrators.

Whereas proof on oath hath been made before me, one of his majesty's justices of the peace for the county [*or* riding, stewartry, division, city, burgh, liberty, town, *or* place] of on this day of that hath been duly summoned, and hath neglected to appear and give evidence before and , the arbitrators appointed by and between and , to determine the matters in dispute between them at in the county [*or* riding, stewartry, division, city, burgh, liberty, town, *or* place] of on the day of under and by virtue of an Act made in the fifth year of the reign of his present majesty, intituled An Act [*here set forth the title of this Act*], and the said being required by me, the said justice, to give evidence before the said arbitrators, and still refusing so to do, therefore I, the said justice, do hereby, in pursuance of the said Act, commit the said to the [*describing the prison and the house of correction*] there to remain without bail or mainprize for his [*or* her] offence aforesaid, until he [*or* she] shall submit himself [*or* herself] to be examined, and give his [*or* her] evidence before the said arbitrators, touching the matters referred to them as aforesaid, or shall otherwise be discharged by due course of law: And you the [*constable or other peace officer or officers to whom the warrant is directed*] are hereby authorized

and required to take into your custody the body of the said and him [*or* her] safely to convey to the said prison [*or* house of correction] and him [*or* her] there to deliver to the gaoler [*or* keeper] thereof, who is hereby authorized and required to receive into his custody the body of the said , and him [*or* her] safely to detain and keep, pursuant to this commitment. Given under my hand, this day of in the year of our Lord .

[This commitment to be directed to the proper peace officer, and the gaoler [or keeper] of the prison [or House of Correction].]

Form of Warrant of Distress.

To the Constable of .

WHEREAS , of , under an award made by on the day of in the year of our Lord , pursuant to an Act passed in the fifth year of the reign of his present Majesty, intituled an Act [*state the title of this Act*], is liable to pay to , of , the sum of , and also the sum of , and the said having refused or neglected to pay the same for the space of two days and upwards subsequent to the making such award, these are therefore to command you to levy the said sum of by distress and sale of the goods and chattels of the said , and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within days, unless the said sum of , for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are also hereby commanded to certify to me what you shall do by virtue of this my warrant.

Given under my hand and seal at the day of .

Form of the Constable's Return to the Warrant of Distress.

I, , constable of , do hereby certify to , justice of the peace of , that I have made diligent search for, but do not know of, nor can find any goods and chattels of by distress and sale whereof I may levy the sum of , pursuant to his warrant for that purpose.

Dated the day of , in the year of our Lord .

Given under my hand this day of , in the year of our Lord .

Form of Commitment thereupon to the House of Correction.

[*Here name the county.*] To the Constable of , and also to the Keeper of the House of Correction at .

WHEREAS of under an award made by on the day of in the year of our Lord , pursuant

to an Act passed in the fifth year of the reign of his present Majesty, intituled An Act [*state the title of this Act*], became liable to pay to the sum of and also the sum of for costs, time, and expenses, making together the sum of , and having refused or neglected to pay the same for the space of two days and upwards subsequent to the making of such award, my warrant was, according to the provisions of the said Act, duly made and issued for the levying the said sum of by distress and sale of the goods and chattels of the said : and whereas it appears by the return of , constable of , dated the day of , that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said , by distress and sale whereof the said sum of may be levied pursuant to my said warrant: these are therefore to command you, the said constable of , to apprehend the said , and convey him to the said house of correction at aforesaid, and deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction to receive him the said into the said house of correction, and there keep him, without bail or mainprize for the space of months, unless the said sum of so ordered to be paid as aforesaid, shall be sooner satisfied, with all reasonable expenses.

Given under my hand and seal, at , the day of .

Form of Commitment where the warrant of distress is withheld.

[*Here name the county.*] To the Constable of and also to the Keeper of the House of Correction at .

WHEREAS of , under an award made by on the day in the year of our Lord , pursuant to an Act passed in the fifth year of the reign of his present Majesty, intituled an Act [*state the title of this Act*], became liable to pay to the sum of and also the sum of for costs, time, and expenses, making together the sum of , which he has refused or neglected to pay for the space of two days and upwards subsequent to the making of such award: and whereas it appears to me that the recovery of such sum and warrant of distress and sale of the goods and chattels of the said will be attended with consequences ruinous or in an especial manner injurious to the defaulter [and his family, *if any*], and I have therefore determined to withhold such warrant and to commit the said to prison, pursuant to the said Act: these are therefore to command you, the said constable of , to apprehend the said and convey him to the said house of correction at aforesaid, and deliver him there to the keeper of the said house of correction: and these are also to command you, the keeper of

the said house of correction, to receive him the said into the said house of correction, and there keep him, without bail or mainprize, for the space of months, unless the said sum of , so ordered to be paid as aforesaid, shall be sooner satisfied, with all reasonable expenses.

Given under my hand and seal, at , the day of

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7 WILL. IV. AND 1 VICT. C. 67 (1837).

An Act to Amend an Act of the Fifth Year of his Majesty King George the Fourth, for Consolidating and Amending the Laws relative to the Arbitration of Disputes between Masters and Workmen.

"WHEREAS an Act was passed in the fifth year of the reign of his Majesty King George the Fourth, intituled 'An Act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen:' and whereas it is provided by the said Act that all complaints under the same by any workman for any cause, except as to bad materials, shall be made within six days after such cause of complaint shall arise; but the said period of six days has been found too short for the purpose thereby intended:" Be it therefore enacted, that the same be extended to fourteen days.

2. And whereas it is enacted by the said Act, that various differences under the same shall be subject as therein mentioned to the adjudication of any justice of the peace or magistrate of any county, riding, division, stewartry, barony, city, burgh, town, or place within which the parties reside: and whereas many cases have arisen where no justice of the peace or magistrate could be found who has jurisdiction where both of the parties differing as aforesaid reside: in consequence whereof it has been doubted whether the above beneficial enactment can in such cases take effect, and for the remedy thereof it is necessary that the jurisdiction and powers which are by the said Act conferred on the justices or magistrates of the district where both parties reside shall in future be exercised by the justices or magistrates of the district where the party complained against resides: be it enacted that in the place of the justices or magistrates of the district where both parties reside, the justices or magistrates of the district where the parties complained against reside shall have said jurisdiction and powers; and whatever acts and duties are by the said Act required to be done by the first-mentioned justices or magistrates, or any one of them, shall be done by the last-mentioned justices or magistrates, or by any one of them; and the said Act shall in all respects be strued as if the words "where the party complained

against resides" had been originally inserted in the third section of the said Act instead of the words "within which the parties reside."

3. That wherever the expression "justice of the peace" occurs in the said Act it shall be construed to mean "magistrate."

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30 & 31 VICT. c. 105 (1867).

An Act to establish Equitable Councils of Conciliation to adjust differences between Masters and Workmen.

WHEREAS an Act was passed in the fifth year of the reign of King George the Fourth, intituled "An Act to consolidate and amend the Laws relative to Arbitration of Disputes between Masters and Workmen;" and another Act was passed in the first year of the reign of her present Majesty Queen Victoria, chapter sixty-seven; and another Act was passed in the eighth and ninth years of the reign of her present Majesty, chapter seventy-seven; and another Act was passed in the eighth and ninth years of the reign of her present Majesty, chapter one hundred and twenty-eight, and the three last-mentioned Acts were passed to amend the said first-recited Act:

And whereas, in order the better to facilitate the settlement of disputes between masters and workmen, it is expedient, without repealing the said several Acts, that masters and workmen should be enabled, when licensed by her Majesty, to form equitable councils of conciliation or arbitration, and that the powers in the said Acts contained for enforcing awards made under or by virtue of the provisions thereof should be extended to the enforcing of awards to be made by and under the authority of such equitable councils of conciliation:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. If any number of masters and workmen, in any particular trade or trades, occupation, or employment, being inhabitant householders or part occupiers of any house, warehouse, counting-house, or other property within any city, borough, town, stewartry, riding, division, barony, liberty, or other place, and who, being a master in such trade, shall have resided and carried on the same within any such place for six calendar months previous to the signing of such petition, and being a workman shall have resided for a like period within any such place, and shall have worked at his trade or calling for seven years previous to the signing of such petition, shall at a meeting specially convened for that purpose agree to form a council of conciliation and arbitration, and shall

jointly petition her Majesty to grant them a licence to form such council, to hold, have, and exercise all the powers granted to arbitrators and referees under the before-recited Acts, and in such petition for the same shall set forth the number of the council, and also the names, occupation, and residence of the petitioners, and the manner in which the expenses of the said council and of the registry hereinafter directed are to be provided for, it shall then be lawful for Her Majesty, or Her Majesty's principal Secretary of State for the home department, to grant such licence, provided notice of such petition has been published one month before the application for such licence in the *London Gazette*, and in one or more of the local newspapers of the place whence such petition emanates: Provided always, that it shall be lawful for any masters and workmen in any particular trade or trades, occupation, or employment as aforesaid, within the limits of the application of the Metropolitan Local Management Act, or within any two or more boroughs or districts of the Metropolis, to associate themselves for the purposes of this Act, and with such licence as aforesaid to form councils as aforesaid, as if they resided within any one borough or district.

2. The said council shall consist of not less than two masters and two workmen, nor more than ten masters and ten workmen, and a chairman; the number to constitute the said council to be inserted in the licence; but no member of the council shall adjudicate in any case in which he or any relation of his is plaintiff or defendant.

3. For the purposes of this Act, the persons whose names, occupations, and abodes are attached to the petition praying for a licence shall and they are hereby authorized to proceed to the appointment of a council of conciliation and arbitration from among themselves within thirty days after such grant of licence; and the said council shall remain in office until the appointment of a new council in its stead.

4. The council shall have power to appoint their own chairman, clerk, or such other officer or officers as they may deem requisite, and shall have power to hear and determine all questions of dispute and difference between masters and workmen, as set forth in the before-recited Act of the fifth year of King George the Fourth, chapter ninety-six, which may be submitted to them by both parties, and shall have, hold, and exercise all the powers and authority granted to arbitrators and referees by and under the various enactments and provisions of the Acts before recited; and any award the said equitable councils of conciliation and arbitration may make in any case of dispute or difference submitted to them under the before-recited Act or Acts, or under this Act, shall be final and conclusive between the parties to such arbitration, without being subject to review or challenge by any Court or authority whatsoever; and the said council are hereby further authorized to adjudicate upon and determine any other case of dispute or difference submitted to them by the mutual consent of master and workman or masters and workmen, and the same proceedings of distress, sale, and imprisonment

as are provided by the said recited Acts or any of them shall be had towards enforcing every such award (by application to any justice of the peace of the county, stewartry, riding, division, barony, city, town, burgh, or place within which the parties shall reside,) as are by the said recited Acts or any of them prescribed for enforcing awards made under or by virtue of the provisions of them or any of them, and any award in writing under the hand of the chairman of the council shall be deemed sufficient evidence of the validity of such award to authorize such proceedings of distress, sale, and imprisonment; but nothing in this Act contained shall authorize the said council to establish a rate of wages or price of labour or workmanship at which the workman shall in future be paid.

5. A quorum of not less than three (one being a master and another a workman, and the third the chairman), may constitute a council for the hearing and adjudication of cases of dispute, and may accordingly make their award; but a committee of council, to be denominated the committee of conciliation, shall be appointed by the council, consisting of one master and one workman, who shall sit at such times as shall be appointed, and be renewed from time to time as occasion shall require; and all cases or questions of dispute which shall be submitted to the council by both parties shall in the first instance be referred to the said committee of conciliation, who shall endeavour to reconcile the parties in difference; when such reconciliation shall not be effected, the matter in dispute shall be remitted to the council, to be disposed of as a contested matter in the regular course.

6. The chairman of the council, who shall be some person unconnected with trade, shall preside at their meetings, and shall be appointed at their first meeting after obtaining such licence as aforesaid. When the votes of the council shall be equal, the chairman for the time being is to have the casting vote.

7. No counsel, solicitors, or attornies to be allowed to attend on any hearing before the council or the committee of conciliation unless consented to by both parties.

8. On the first Monday in November in the year next after the first appointment of the council, and on the first Monday in November in each succeeding year, a council and chairman shall be appointed, who shall remain in office until the appointment of a new council; and in case of vacancies arising betwixt the fixed days of election in each year, caused by the death or removal of any member of the council or of the chairman, an election shall take place within fourteen days, and another member be elected to fill up the said vacancy from the class to which he may belong, or a chairman be appointed, as the case may be, and the member or chairman so elected shall serve the remainder of the year.

9. For the purposes of this Act, each person being twenty-one years of age, belonging to the trade having a licence for a council, and being

an inhabitant householder or part occupier of any house, warehouse, counting-house, or other property, who, being a master in such trade, has resided and carried on the same within the limits of any city, borough, town, stewartry, riding, division, barony, liberty, or other place, wherever an equitable council of conciliation and arbitration is formed, for the space of six calendar months previous to the ninth day of November in any one year, and being a workman has resided for a like period within the same limits, and has worked at his trade or calling seven years previous to the ninth day of November in any one year, shall be entitled to be registered as a voter for the election of the council, and shall be qualified to be elected a member of such council; but the masters shall appoint their own portion of the council, and the workmen elect their portion of the council.

10. The clerk of each division of the council shall keep a register of every person claiming to have his name inscribed on the register as a voter for the council, whether master or workman (but distinct from each other), the said register to contain the name, occupation, and abode of each person engaged in the particular trade or occupation as set forth in the licence granting the formation of the council; and the said clerk shall, upon payment of a registration fee being made to him, register the same immediately, or be liable to be fined for neglect, the said fine to be applied to the funds of the said council, and the council is hereby empowered to fix and determine the amount of such fee and fine respectively: Provided that in case it shall appear to the council that any person ought not to be so registered, the council shall strike the name of such person off such register.

11. The clerk of the council shall, for the purposes of this Act, be the returning officer; he shall convene meetings of masters and meetings of workmen, by advertisement, fourteen clear days previous to the first day of November; and each class shall at such meetings proceed to nominate and elect members to the council for the year next ensuing; the votes to be taken by show of hands or division of numbers, and in such place as the council may authorize; and the clerk shall declare to the said meeting the names of the candidates who are elected, and the same shall be final and conclusive, unless a poll is demanded at the time the declaration is made; but either party may demand a poll of those only whose names are registered in the books of the council.

12. A poll being demanded by six registered voters, the council shall appoint time and place for that purpose, where each voter shall be entitled to record his vote.

13. The clerk shall, within seven days after the day of nomination, in case of a poll being demanded, declare the number of votes given to each candidate, and those having received the largest number of votes shall be declared duly elected.

14. The council shall also appoint a clerk, who shall continue in office until a new appointment shall be made in his stead, and who shall keep

a record of all their proceedings, and do and perform such other duties as this Act may authorize or the said council may require.

15. The council may hold their sittings in any public room used for conducting public business, with the permission of the authority having the power to grant such permission.

16. Every council elected under this Act shall from time to time make out a list of fees which shall be charged for any proceeding and other expenses under this Act, and shall appoint such officers as may be necessary, and make such byelaws, rules, and regulations for their guidance, and for the taking and scrutiny of the votes given for the election of members of the council, and also for the despatch of business, as they may deem necessary; such byelaws, rules, regulations, and fees not to be legal and binding in law unless and until they shall be sanctioned by the Secretary of State for the home department.

17. The Acts before recited shall remain in full force and effect as though this Act had not been passed: this Act shall not be construed to extend to domestic servants or servants in husbandry.

18. In citing this Act for any purpose whatever it shall be sufficient to use the expression "the Councils of Conciliation Act, 1867."

19. This Act shall commence on the second day of July, one thousand eight hundred and sixty-seven.

SCHEDULE OF FORMS.

Form of Summons of a witness to be issued by chairman.

County of } To the of the Equitable Council
or Borough of } of Conciliation and Arbitration.

WHEREAS it appeareth to me, *A.B.*, chairman of the said Equitable Council of Conciliation and Arbitration held at , that *G.H.* of in the borough [*or* county, *as the case may be*,] is a material witness to be examined concerning the dispute between *C.D.* of and *E.F.* of under the Act [*here set forth the title of the Act*]: These therefore are to require you forthwith to summon the said *G.H.* to appear before the said Equitable Council of Conciliation and Arbitration, held at the at the hour of in the noon of the day of 18 , so that the said dispute may be adjudicated upon and settled forthwith according to law; and be you then there to certify what you have done in the premises. Herein fail not.

Given under my hand, this day of in the year of our Lord .

(Signed) *A.B.*,
Chairman of the Equitable Council of Conciliation and Arbitration.

Form of Award.

We *I.K.* and *L.M.* [*name and describe the arbitrators*], the arbitrators in the matters in dispute between [*here state the names of plaintiff and defendant to the reference*], do hereby adjudge and determine that [*here set forth the determination, to which the chairman and arbitrators shall subscribe their names*].

Signed this day of 18 .

Form of Endorsement extending the time limited for making the Award.

We , members of the Equitable Council of Conciliation and Arbitration, do hereby agree to extend the time of hearing [*or* making an award, *as the case may be*,] in the matter in dispute between of and of to the day of .

Witness our hands, this day of 18 .

Form of Acknowledgment of fulfilment of the Award.

I , chairman of the Equitable Council of Conciliation and Arbitration, do hereby acknowledge that the award in the matter of dispute between of and of hath been duly fulfilled by who is hereby discharged of the same.

Witness my hand, this day of .

A.B., Chairman.

[*Form of Acknowledgment of fulfilment of the Award.*

I , Chairman of the Equitable Council of Conciliation and Arbitration, do hereby acknowledge that the award in the matter of dispute between of and of to the day of .

Witness my hand, this day of 18 .

A.B., Chairman (*f*).

Form of Oath to be administered by the Arbitrators to the parties and witnesses under this Act.

The evidence that you shall give before this Equitable Council of Conciliation and Arbitration between and under and by virtue of this Act [*here state the title of this Act*] shall be the truth, the whole truth, and nothing but the truth.

So help you GOD.

(*f*) This unintelligible form and, in fact, the whole schedule of forms, are omitted from the revised statutes.

Form of Commitment of a person summoned as a witness before the Arbitrators.

WHEREAS proof on oath hath been made before me, one of Her Majesty's justices of the peace for the county [*or* riding, stewartry, division, city, burgh, liberty, town, *or* place] of , on this day of , that *A.B.* hath been duly summoned, and hath neglected to appear and give evidence before the Equitable Council of Conciliation and Arbitration for the in the matters of dispute between *C.D.* and *E.F.*, at in the county [*or* riding, stewartry, division, city, burgh, liberty, town, *or* place] of , on the day of , under and by virtue of an Act made in the twenty-fourth year of the reign of Her present Majesty, intituled "An Act" [*here set forth the title of this Act*]; and the said *A.B.* being required to appear and give evidence before the said arbitrators, and still refusing so to do: Therefore I, the said justice, do hereby, in pursuance of the said Act, commit the said *A.B.* to the [*describing the prison or the house of correction*], there to remain without bail or mainprise, for his [*or* her] offence aforesaid, until he [*or* she] shall submit himself [*or* herself] to be examined and give his [*or* her] evidence before the said arbitrators touching the matters referred to them, or shall otherwise be discharged by due course of law: And you the [*constable or other peace officer or officers to whom the warrant is directed*] are hereby authorized and required to take into your custody the body of the said *A.B.*, and him [*or* her] safely convey to the said prison [*or* house of correction], and him [*or* her] there to deliver to the gaoler [*or* keeper] thereof, who is hereby authorized and required to receive into his custody the body of the said *A.B.*, and him [*or* her] safely to detain and keep, pursuant to this commitment.

Given under my hand, this day of in the year of our Lord .

(This commitment to be directed to the proper peace officer and the gaoler [*or* keeper] of the prison [*or* house of correction]).

Form of Warrant of Distress.

To the constable of .

WHEREAS of under an award made by on the day of in the year of our Lord pursuant to an Act passed in the twenty-fourth year of the reign of Her present Majesty, intituled "An Act" [*state the title of this Act*], is liable to pay to of the sum of , and also the sum of ; and the said having refused or neglected to pay the same for the space of two days and upwards subsequent to the making of such award: These are therefore to command you to levy the said sum of by distress and sale of the goods and chattels of the said ; and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within days, unless the sum of for which such distress shall be made,

together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify to me what you shall do by virtue of this my warrant.

Given under my hand and seal at the day of .

Form of the Constable's return to the warrant of distress.

I constable of , do hereby certify to . justice of the peace , that I have made diligent search for but do not know of nor can find any goods and chattels of by distress and sale whereof I may levy the sum of pursuant to his warrant for that purpose, dated the day of in the year of our Lord .

Given under my hand, this day of the year of our Lord .

Form of Commitment thereupon to the House of Correction.

[*Here name the County.*] } To the constable of and also to the keeper of the house of correction at .

WHEREAS of under an award made by on the day of in the year of our Lord pursuant to an Act passed in the twenty-fourth year of the reign of Her present Majesty, intituled "An Act" [*state the title of this Act*], became liable to pay to the sum of , and also the sum of for costs, time, and expenses, making together the sum of , and having refused or neglected to pay the same for the space of two days and upwards subsequent to the making of such award, my warrant was, according to the provisions of the said Act, duly made and issued for the levying the said sum of by distress and sale of the goods and chattels of the said : And whereas it appears by the return of constable of , dated the day of , that he hath made diligent search for but doth not know of nor can find any goods and chattels of the said by distress and sale whereof the said sum of may be levied, pursuant to my said warrant: These are therefore to command you, the said constable of , to apprehend the said and convey him to the said house of correction at aforesaid, and deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction, to receive him the said into the said house of correction, and there keep him, without bail or mainprise, for the space of months, unless the said sum of so ordered to be paid as aforesaid shall be sooner satisfied, with all reasonable expenses.

Given under my hand and seal at the day of .

Form of Commitment where the Warrant of Distress is withheld.

[*Here name the County.*] To the constable of and also to the keeper of the house of correction at .

WHEREAS of under an award made by on the day of in the year of our Lord , pursuant to an Act passed in the twenty-fourth year of the reign of Her present Majesty, intituled "An Act" [*state the title of this Act*], became liable to pay to the sum of , and also the sum of for costs, time, and expenses, making together the sum of , which he has refused or neglected to pay for the space of two days and upwards subsequent to the making of such award: And whereas it appears to me that the recovery of such sum and warrant of distress and sale of the goods and chattels of the said will be attended with consequences ruinous or in an especial manner injurious to the defaulter [and his family, *if any*], and I therefore have determined to withhold such warrant, and to commit the said to prison, pursuant to the said Act: These are therefore to command you, the said constable of , to apprehend the said , and convey him to the house of correction at aforesaid, and to deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction, to receive him the said into the said house of correction, and there keep him, without bail or mainprise, for the space of months, unless the said sum of so ordered to be paid as aforesaid shall be sooner satisfied, with all reasonable expenses.

Given under my hand and seal at the day of .

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35 & 36 VICT. c. 46 (1872).

An Act to make Further Provision for Arbitration between Masters and Workmen.

WHEREAS by the Act of the fifth year of George the Fourth, chapter ninety-six, intituled "An Act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen," hereinafter referred to as the "principal Act," provision is made for the arbitration in a mode therein prescribed of certain disputes between masters and workmen:

And whereas it is expedient to make further provision for arbitration between masters and workmen:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The following provisions shall have effect with reference to agreements under this Act :

(1.) An agreement under this Act shall either designate some board, council, persons or person as arbitrators or arbitrator, or define the time and manner of appointment of arbitrators or of an arbitrator ; and shall designate, by name, or by description of office or otherwise, some person to be, or some person or persons (other than the arbitrators or arbitrator) to appoint an umpire in case of disagreement between arbitrators :

(2.) A master and a workman shall become mutually bound by an agreement under this Act (hereinafter referred to as "the agreement") upon the master or his agent giving to the workman and the workman accepting a printed copy of the agreement :

Provided that a workman may, within forty-eight hours after the delivery to him of the agreement, give notice to the master or his agent that he will not be bound by the agreement, and thereupon the agreement shall be of no effect as between such workmen and the master :

(3.) When a master and workman are bound by the agreement they shall continue so bound during the continuance of any contract of employment and service which is in force between them at the time of making the agreement, or in contemplation of which the agreement is made, and thereafter so long as they mutually consent from time to time to continue to employ and serve without having rescinded the agreement. Moreover, the agreement may provide that any number of days' notice, not exceeding six, of an intention on the part of the master or workman to cease to employ or be employed shall be required, and in that case the parties to the agreement shall continue bound by it respectively until the expiration of the required number of days after such notice has been given by either of the parties :

(4.) The agreement may provide that the parties to it shall, during its continuance, be bound by any rules contained in the agreement, or to be made by the arbitrators, arbitrator, or umpire as to the rate of wages to be paid, or the hours or quantities of work to be performed, or the conditions or regulations under which work is to be done, and may specify penalties to be enforced by the arbitrators, arbitrator, or umpire for the breach of any such rule :

(5.) The agreement may also provide that in case any of the following matters arise they shall be determined by the arbitrators or arbitrator, viz. :

a. Any such disagreement or dispute as is mentioned in the second section of the principal Act ; or

b. Any question, case, or matter to which the provisions of the Master and Servant Act, 1867, apply ;

and thereupon in case any such matter arises between the parties while they are bound by the agreement, the arbitrators, arbitrator, or umpire shall have jurisdiction for the hearing and determination thereof, and upon their or his hearing and determining the same no other proceeding shall be taken before any other court or person for the same matter ; but if the disagreement or dispute is not so heard and determined within twenty-one days from the time when it arose, the jurisdiction of the arbitrators, arbitrator, or umpire shall cease, unless the parties have, since the arising of the disagreement or dispute, consented in writing that it shall be exclusively determined by the arbitrators, arbitrator, or umpire :

A disagreement or dispute shall be deemed to arise at the time of the act or omission to which it relates :

(6.) The arbitrators, arbitrator, or umpire may hear and determine any matter referred to them in such manner as they think fit, or as may be prescribed by the agreement :

(7.) The agreement, and also any rules made by the arbitrators, arbitrator, or umpire in pursuance of its provisions, shall in all proceedings as well before them as in any court be evidence of the terms of the contract of employment and service between the parties bound by the agreement :

(8.) The agreement shall be deemed to be an agreement within the meaning of the thirteenth section of the principal Act for all the purposes of that Act :

(9.) If the agreement provides for the production or examination of any books, documents, or accounts, subject or not to any conditions as to the mode of their production or examination, the arbitrators, arbitrator, or umpire may require the production or examination (subject to any such conditions) of any such books, documents, or accounts in the possession or control of any person summoned as a witness, and who is bound by the agreement, and the provisions of the principal Act, for compelling the attendance and submission of witnesses, shall apply for enforcing such production or examination.

2. This Act may be cited as "The Arbitration (Masters and Workmen) Act, 1872."

CHAPTER XIII.

TRADE UNIONS.

Combinations or conspiracies on the part of workmen to raise their wages or shorten their hours of labour have not been always permitted. Statutes prohibiting them were passed as long ago as the reign of Edward III. (1360, 34 Edward III. c. 9). The 3 Henry VI. c. 1 (1425) forbade the holding of chapters and congregations of masons. The 2 & 3 Edward VI. c. 15 (1548), enacted that if artificers or labourers do "conspire, covenant, or promise together, or make any oaths, that they shall not make or do their work but at a certain price or rate, or shall not enterprise or take upon them to finish that another hath began, or shall do but a certain work in the day, or shall not work but at certain hours and times, then every such person so conspiring, &c., being convict thereof, shall forfeit ten pounds to the King's Highness." One of the last of these statutes was the 39 & 40 Geo. III. c. 106, by which all agreements between workmen for obtaining a rise in wages were declared illegal.

Whether a combination to raise wages was also at Common Law an indictable offence is not clear. As first defined in the Ordinance of Conspirators, 33 Edward I. (1305), conspiracy is, in the main, a combination for the false and malicious promotion of indictments; and it is sometimes stated that this is the proper definition of it (*a*). It is certain that the early reports and such works as Hale's Pleas and

(*a*) *Savile* v. *Roberts*, 1 Ray., p. 377.

East's Pleas of the Crown contain references mainly to conspiracies of this character, or conspiracies of which the persons indicted were really accessories to some well-known form of crime. In accordance with the remarks of Campbell, C. J., in *Hilton* v. *Eckersley* (*b*), Mr. Wright, in his able work on the Law of Conspiracy, has endeavoured to show that at Common Law a conspiracy to do things which it was lawful for an individual to do was, as a rule, not a criminal offence. He has advanced strong arguments in favour of this view, but in several cases which are quoted below (*c*) it was expressly stated by eminent judges that combinations with a view to raise wages were criminal, and there are not a few reasons for believing that this is correct.

In the year 1824 a statute was passed (the 5 Geo. IV. c. 95), repealing the prior Acts relative to combinations of workmen or of masters, or as to raising or lowering the rate of wages, or altering the hours or quantity of work, or regulating the manner of carrying on business. Section 2 expressly provided :—

"That journeymen, workmen or other persons who shall enter into any combination to obtain an advance, or to fix the rate of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to induce another to depart from his service before the end of the time or term for which he is hired, or to quit or return his work before the same shall be finished, or not being hired, to refuse to enter into work or employment, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof, shall not therefore be subject or liable to any indictment or prosecution for conspiracy, or to any other criminal information or punishment whatever, under the common or the statute law."

By the 3rd section corresponding liberty was given to employers. The 5th section made a reservation in the case of

(*b*) See note (*f*).

(*c*) *Rex* v. *Wheatly* (1761), 2 Bur. 1125 ; 1 W. B. 273 ; *Anon.* (1755), Sayer, 260 ; *Anon.* (1698), 12 Mod. 248. ("It is fit that all confederacies by those of trade to raise their rates should be suppressed," Holt, C.J.) ; *King* v. *Journeymen Tailors of Cambridge* (1721), 8 Mod. 10 ; *King* v. *Norris* (1758), 2 Kenyon, 300 ; *Rex* v. *Eccles* (1783), Willes, 583, 1 Leach, 274 ; *Rex* v. *Mawbey* (1796), 6 T. R. 636 ; *Rex* v. *Hammond* (1799), 2 Esp. 719 ; *Reg.* v. *Parnell* (1881), 13 Cox, 508.

any person who by violence to the person or property, by threats, or by intimidation, should unlawfully or maliciously force another to depart from his hiring or work. Various associations having made use of the liberty thus granted, this Act was, in accordance with the recommendation of a select committee, repealed, and another, the 6 Geo. IV. c. 129, was passed. The 3rd section enacted that:—

"If any person shall by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any journeyman, manufacturer, workman or other person hired or employed in any manufacture, trade or business, to depart from his hiring, employment or work, or to return his work before the same shall be finished, or prevent or endeavour to prevent any journeyman, manufacturer, workman, or other person not being hired or employed from hiring himself to, or from accepting work or employment from any person or persons; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute, to any common fund, or to pay any fine or penalty, or on account of his not having complied or of his refusing to comply with any rules, orders, resolutions or regulations made to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof; or if any person shall by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting or carrying on such manufacture, trade or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen or servants; every person so offending or aiding, abetting or assisting therein, being convicted thereof in manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labour, for any time not exceeding three calendar months. Section 4.—Provided always, that this Act shall not extend to subject any persons to punishment who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting or any of them, shall require or demand for his or their

work, or the hours or time for which he or they shall work in any manufacture, trade or business, or who shall enter into any agreement, verbal or written, among themselves for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall require or demand for his or their work, or the hours or time for which he or they will work, in any manufacture, trade or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding."

This Act was amended in 1859 by the 22 Vict. c. 34, which declared that agreements by workmen or others as to wages or hours of work, whether of the persons present at the meeting or of other workmen, and peaceable and reasonable persuasion by workmen or others to abstain from work in order to secure such wages or hours, should not be deemed to be "molestation" or "obstruction" within the meaning of the Act of 1825.

After the passing of the 6 Geo. IV. c. 129, the state of the law as to strikes and combinations of workmen was obscure. The balance of authority was in favour of strikes not being necessarily illegal in the sense that each person who took part in them might be indicted. In *Rex* v. *Selsby* (*d*), Rolfe, B., ruled that strikes *per se* were not illegal. "It is lawful for a dozen people to agree together and say 'We will not work unless A. B. raise our wages.'" Erle, J., ruled to the same effect in *Reg.* v. *Rowlands* (*e*). But, in *Hilton* v. *Eckersley* (*f*), decided in 1856, Crompton, J., declared that combinations to raise wages were "illegal and indictable at Common Law." In *Walsby* v. *Anley*, decided in 1861, the same judge repeated his opinion that at Common Law all such combinations were illegal, and that the effect of 6 Geo. IV. c. 129 was to restore that law (*ff*).

(*d*) (1847), 5 Cox, C. C. 495, n.

(*e*) (1851), 17 Q. B. 671; 5 Cox, 536; Hannen, J., in *Farrer* v. *Close* (1869), L. R. 4 Q. B. 602; 38 L. J. M. C. 132; Cockburn, C.J., in *Walsby* v. *Anley* (1861), see note (*i*); on the other hand, compare *Rex* v. *Bykerdyke* (1832), 1 M. & R. 179.

(*f*) 6 E. & B. 47.

(*ff*) See also as to effect of 6 Geo. IV. c. 129, Sir William Erle's Memorandum on Trade Unions, p. 58.

Nor was it clear what might lawfully be done by workmen in order to give effect to a strike. By most judges it was held to be a threat or coercion for workmen to give notice to their employer that they would leave unless a workman whom they disliked was discharged, or unless the employer made a change in the mode of conducting his business. This is the effect of *Rex* v. *Bykerdyke* (*g*), *Rex* v. *Duffield* (*h*), *Walsby* v. *Anley* (*i*), *O'Neil* v. *Longman* (*k*), *Shelbourne* v. *Oliver* (*l*), *Skinner* v. *Kitch* (*m*). A "threat," within the meaning of the Act, must be, it was admitted, a threat to do something illegal. In *Walsby* v. *Anley*, the Court so decided, and also held that a combination with a view to induce a master to dismiss certain men was a threat, as being an illegal act. The cases referred to in the notes show that "threat" was not confined to threats of violence to the person or property (*n*).

How far were trade unions with objects in restraint of

(*g*) (1832), 1 M. & R. 179. (Workmen combined to send a letter to an employer to the effect that his men would strike in fourteen days unless certain workmen were discharged; Patteson, J., ruled that 6 Geo. IV. c. 129 never meant to empower workmen to meet or combine for the purpose of dictating to the master whom he should employ.

(*h*) (1851), 5 Cox, 405, where Erle, J., denies the right of workmen to "combine together to induce men, already in the employment of other masters, to leave their work for the purpose of compelling those masters to raise their wages." See also *Rex* v. *Hewitt* (1851), 5 Cox, 162.

(*i*) (1861), 3 E. & E. 516; 30 L. J. M. C. 121; 9 W. R. 271; 3 L. T. N. S. 666. (Appellant summarily convicted because he and two other workmen of A. went to him with a paper signed by appellant and other workmen of A., saying that they had resolved at a meeting to cease working immediately unless certain workmen were discharged, and they had a definite answer by dinner time.)

(*k*) (1863), 4 B. & S. 376. (Chairman at a meeting of a benefit club asked workman whether he would leave certain shop, or stay and be despised by the club, have his name sent round the country, and be put to all sorts of unpleasantness; a threat within the statute.)

(*l*) (1866), 13 L. T. N. S. 630. (Workmen going in a body to a master and saying, "Unless you discharge him (a person who had not struck work) your men shall not be allowed to work;" a threat under s. 3.)

(*m*) (1867), L. R. 2 Q. B. 393. (A notice served by secretary of branch lodge of carpenters' union upon a master builder, stating that he had been requested by the committee to give the men in the builder's employment notice to come out on strike against him, unless he became a member of the society; appellant rightly convicted.)

(*n*) 30 L. J. M. C., p. 123; Lush, J., in *Wood* v. *Bowton* (1866), 10 Cox, p. 351; and compare remarks of Sir W. Erle in Memorandum on Trade Unions, p. 65.

trade affected by the legislation just described? This was considered by the Court of Queen's Bench in *Hilton* v. *Eckersley* (*o*) in 1856. An agreement under seal was entered into by eighteen cotton spinners to carry on or suspend for twelve months their works in conformity with the resolution of a majority, under a penalty of five hundred pounds. The Court held the bond to be void, as being in restraint of trade, and this was affirmed in the Exchequer Chamber. The remarks of Crompton, J., are worth noting: "I think," he said, "that combinations like that disclosed in the pleadings in this case were illegal and indictable at Common Law, as tending directly to impede and interfere with the free course of trade and manufacture. Combinations of this nature, whether on the part of the workmen to increase, or of the masters to lower, wages were equally illegal. By recent enactments, carefully worded, combinations to raise or lower the rate of wages, and to regulate the hours of labour, are made no longer punishable. But these enactments do not make such agreements legal agreements in the sense that the breach of them can be enforced at law; and still less do they apply to make enforceable at law an agreement, not being a mere stipulation among the parties themselves, which any one might withdraw from at his pleasure, but binding and tying themselves up, under a penalty, to close their works if a majority of a particular body shall dictate to them so to do. I think this bond void, as being in restraint of the freedom of trade, and from its mischievous and dangerous tendency, pointed out in the agreement, with respect to strikes and combinations. . . . The public are not recompensed for the ceasing of one party by the other parties being able to carry on their trade with increased facilities." Lord Campbell agreed with Crompton, J., in his conclusion, and he thought that the bond was invalid, on the ground that it was against public policy; but he declined to say that a criminal offence at Common Law had been

(*o*) 5 E. & B. 682; 6 E. & B. 47; 199; 26 L. T. 314. 24 L. J. Q. B. 353; 25 L. J. Q. B.

committed. A similar question arose in 1867 in *Hornby* v. *Close* (*p*). A society which had a considerable number of rules intended for the maintenance of men on strike was held not to be a Friendly Society within sections 9 and 44 of the Friendly Societies Act, 18 & 19 Vict. c. 63, which gave certain remedies to a friendly society established "for any purpose which is not illegal." Consequently the justices had no summary jurisdiction in case of fraud or misappropriation of funds by members. The same point came up in *Farrer* v. *Close* (*q*). An information had been laid against an officer of a Friendly Society under sections 24 and 44, 18 & 19 Vict. c. 63. Cockburn, C. J., and Mellor, J., thought that the rules of the society were in effect those of a trade union; the objects being in restraint of trade, they were of opinion that the decision in *Hornby* v. *Close* was applicable. Two members of the Court, Hannen and Hayes, J.J., differed from this conclusion. Hannen, J., pointed out that there was no evidence to show that the funds of the Society were applied to the support of any illegal strike. A strike "may be criminal, as if it be part of a combination for the purpose of injuring or molesting either masters or men; or it may be simply illegal, as if it be the result of an agreement depriving those engaged in it of their liberty of action, similar to that by which the employers bound themselves in *Hilton* v. *Eckersley*, or it may be perfectly innocent, if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for the purpose of compelling the fulfilment of an engagement entered into between employers and employed, or any other lawful purpose."

In this state of doubt as to the exact position of trade unions, a Royal Commission was appointed to inquire into their organisation; and after the Commission had reported, two Acts, the 34 & 35 Vict. c. 31, and 34 & 35 Vict. c. 32

(*p*) 36 L. J. M. C. 43; 8 B. & S. 175; 10 Cox, C.C. 393.

(*q*) (1869) 38 L. J. M. C. 132; L. R. 4 Q. B. 602; 20 L. T. N. S. 802; 17 W. R. 1129; 10 B. & S. 553.

(the Criminal Law Amendment Act, 1871), were passed. The second of these was repealed by the 38 & 39 Vict. c. 86, s. 17. The first as amended is still in force.

34 & 35 VICT. c. 31 (1871).

An Act to amend the Law relating to Trade Unions.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as "The Trade Union Act, 1871."

Criminal Provisions.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

4. Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

(1.) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed:

(2.) Any agreement for the payment by any person of any subscription or penalty to a trade union:

(3.) Any agreement for the application of the funds of a trade union (*r*),—

(*r*) *Rigby* v. *Connol* (1880), 14 Ch. D. 482; 42 L. T. N. S. 139. (A member of a trade union, who was expelled therefrom because, contrary to the rules of the union, he bound his son apprentice in a "foul shop," that is a shop in which persons not members of this union were employed, asked for a declaration that he was entitled to participate in the property and benefits of the union, and an injunction restraining the

(*a.*) To provide benefits to members ; or,

(*b.*) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or,

(*c.*) To discharge any fine imposed upon any person by sentence of a court of justice ; or,

(4.) Any agreement made between one trade union and another ; or,

(5.) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

5. The following Acts, that is to say,

(1.) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same ;

(2.) The Industrial and Provident Societies Act, 1867, and any Act amending the same ; and

(3.) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

defendants from excluding him from such participation. Jessel, M. R., declined to interfere (1) because it was not stated that there were any profits; (2) because the application was contrary to s. 4, sub-s. 3 ; and (3) because many of the stipulations in the rules being in restraint of trade, were illegal apart from the Act. "If nothing in the Act will assist the plaintiff," said Jessel, M.R., "he must still be in the position of a member of an illegal association coming to a Court of justice to assist him to enforce his rights under that illegal association. If that is so, it is impossible for me, and I do not think it was ever intended by the Legislature, looking to the terms of the Act of Parliament, to enable the Courts to interfere on behalf of the members of these societies, for the purpose of getting relief *inter se* with respect to rights and liabilities contrary to the Act."

In a subsequent case decided by Denman, J., *Duke* v. *Littleboy* (1880), 43 L. T. N. S. 266 ; 49 L. J. Ch. 802, it was held that the executive of a trade union, the rules of which provided for the ordering of strikes by the executive council, and also for rendering assistance to other bodies on strike, were not entitled to claim an injunction to restrain the officers of a branch from dividing the balance of the funds, on the ground that it was a proceeding instituted with the object of directly enforcing "an agreement for the application of the funds of a trade union to provide for the benefit of members." *Wolfe* v. *Matthews* (1882), L. R. 21 Ch. D. 194 ; 30 W. R. 839. (Action by certain officers of a trade union to restrain defendants from amalgamating with other trade unions; held that the action lay.) See also *Amalgamated Society of Railway Servants for Scotland* v. *The Motherwell Branch of the Society* (1880), 7 R. 867, where the Court of Session granted an interdict against the defendants parting with the funds in their hands until the rights of the parties could be ascertained ; and *Stokes* v. *Sanders*, Law Times, June 3. 1882, p. 85.

Registered Trade Unions.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom ; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees ; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union ; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office ; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any

of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property, in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is

situate upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings ; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months : Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party ; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Registry of Trade Union.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect :

(1.) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act :

(2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules :

(3.) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public : (*s*)

(4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such

(*s*) *R.* v. *Registrar of Friendly Societies* (1872), L. R. 7 Q. B. 941 ; 41 L. J. Q. B. 336 ; 27 L. T. N. S. 229. (Application to Registrar of Friendly Societies, under 34 & 35 Vict. c. 31, for registration by persons who stated that they were authorised to make the application by a resolution of the executive council of the Amalgamated Society of Carpenters and Joiners. A second application was made a few days afterwards by different persons claiming to register a society in the same name, and stating that they were authorised to do so by a vote of the whole members. The registrar, being satisfied that a *bonâ fide* dispute, involving large interests, existed, declined to register the society ; and the Court of Queen's Bench held that he was right.)

application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars, as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar :

(5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with :

(6.) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect ;

(1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act.

(2.) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed ; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him ; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union ; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the

registrar may from time to time require ; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act.

The registrar shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor.

Legal Proceedings.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by The Summary Jurisdiction Acts.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by The Summary Jurisdiction Acts.

Provided as follows :

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(A.) In England,

(1.) In any place within the jurisdiction of a metropolitan police

magistrate or other stipendiary magistrate, of such magistrate or his substitute :

(2.) In the city of London, of the Lord Mayor or any alderman of the said city :

(3.) In any other place, of two or more justices of the peace sitting in petty sessions.

(B.) In Ireland,

(1.) In the police district of Dublin metropolis, of a divisional justice :

(2.) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court under the provisions of The Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made :

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof :

(3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace in the sum of ten pounds with two sufficient sureties in the sum of ten

pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court :

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody :

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction, with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth years of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

23. In this Act—

The term Summary Jurisdiction Acts means as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three,

intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same :

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanour" means a crime and offence.

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade (*t*) : Provided that this Act shall not affect—

1. Any agreement between partners as to their own business ;
2. Any agreement between an employer and those employed by him as to such employment ;
3. Any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade, or handicraft.

Repeal.

24. The Trades Unions Funds Protection Act, 1869, is hereby repealed. Provided that this repeal shall not affect—

(1.) Anything duly done or suffered under the said Act :

(2.) Any right or privilege acquired or any liability incurred under the said Act :

(3.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said Act :

(4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering, or imposing any such liability, penalty, forfeiture, or punishment as aforesaid.

(*t*) Repealed by sec. 16 of Act of 1876.

SCHEDULES.

FIRST SCHEDULE.

Of Matters to be provided for by the Rules of Trade Unions Registered under this Act.

1. The name of the trade union and place of meeting for the business of the trade union.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

SECOND SCHEDULE.

Maximum Fees.

	£	s.	d.
For registering trade union	1	0	0
For registering alterations in rules . . .	0	10	0
For inspection of documents	0	2	6

After the passing of the Acts of 1871 (the Criminal Law Amendment Act and the Trade Union Act), it was discovered that the first section of the former did not abolish the law of conspiracy so far as it related to trade combinations. The rulings of several judges showed that workmen who took part in a combination not to work with a master, or who refused to work for him unless he dismissed a particular workman, might be indicted and punished. Thus in 1874 (*tt*) Amphlett, B., ruled that "employers had a right to conduct their business in their own way, and if a number of per-

(*tt*) *Reg.* v. *Halliday*, p. 106. Appendix to Report of Royal Commission on Labour Laws.

sons combine together for the purpose of putting undue pressure upon them, and to prevent them from exercising that freedom of will which a man was as much entitled to as the freedom of his body,—if there was an attempt to interfere in that freedom of will, and unless that could be justified, it was an illegal act, a criminal conspiracy on the part of these persons." He refused to accede to the argument that, as the Criminal Law Amendment Act defined what should be the meaning of molesting or obstructing a person for the purposes of that Act, it was to be taken as giving a general definition of these words. A similar view was taken by Mr. Justice Brett (*u*) and by Baron Pollock (*v*). "If there was an agreement among the defendants," said Brett, J., in the *Gas Stokers' Case*, "by improper molestation to control the will of the employers, then I tell you that that would be an illegal conspiracy at Common Law, and that such an offence is not abrogated by the Criminal Law Amendment Act." "If you think that the molestation which was so agreed upon was such as would be likely, in the minds of men of ordinary nerve, to deter them from carrying on their business according to their own will, then I say that is an illegal conspiracy" (*x*).

A Royal Commission, which was appointed in 1874, having suggested alterations in the law, an Act was passed in 1875, entitled the Conspiracy and Protection of Property Act (38 & 39 Vict. c. 86). In the following year the Trade Union (1871) Amendment Act (39 & 40 Vict. c. 22) was passed.

(*u*) *Reg.* v. *Bunn* (1872), 12 Cox, C. C. 316.

(*v*) Second and final report of Labour Commission, 27.

(*x*) 12 Cox C. C. p. 340.

38 & 39 VICT. c. 86 (1875).

ARRANGEMENT OF CLAUSES.

lauses.

1. Short title.
2. Commencement of Act.

Conspiracy and Protection of Property.

3. Amendment of Law as to conspiracy in trade disputes.
4. Breach of contract by persons employed in supply of gas or water.
5. Breach of contract involving injury to persons or property.

Miscellaneous.

6. Penalty for neglect by master to provide food, clothing, &c., for servant or apprentice.
7. Penalty for intimidation or annoyance by violence or otherwise.
8. Reduction of penalties.

Legal Proceedings.

9. Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.
10. Proceedings before court of summary jurisdiction.
11. Regulations as to evidence.
12. Appeal to quarter sessions.

Definitions.

13. General definitions.
14. Definitions of "municipal authority" and "public company."
15. "Maliciously" in this Act construed as in Malicious Injuries to Property Act.

Saving Clause.

16. Saving as to sea service.

Repeal.

17. Repeal of Acts.

Application of Act to Scotland.

18. Application to Scotland. Definitions.
19. Recovery of Penalties, &c., in Scotland.
20. Appeal in Scotland as prescribed by 20 Geo. II. c. 43.

Application of Act to Ireland.

21. Application to Ireland.

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Conspiracy, and Protection of Property Act, 1875.

2. This Act shall come into operation on the first day of September, one thousand eight hundred and seventy-five.

Conspiracy, and Protection of Property.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or

water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gas works or water works, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Miscellaneous.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

(1.) Uses violence to or intimidates(*y*) such other person or his wife or children, or injures his property; or,

(*y*) *Reg.* v. *Druitt*, 10 Cox, 592; (1875), 13 Cox, 82. 16 L. T. N. S. 855; *Reg.* v. *Hibbert*

(2.) Persistently follows such other person about from place to place; or,

(3.) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,

(4.) Watches or besets (*yy*) the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or (*z*),

(5.) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one fourth of the penalty imposed by such Act (*a*).

Legal Proceedings.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly (*b*).

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction

(*yy*) See preceding note (*y*).

(*z*) In *Reg.* v. *Bauld* (1876), 13 Cox, p. 283, Huddleston, B., said, with reference to the statute now in force, it "allows watching or attending near a place for the purpose of obtaining or communicating information; but this is the only exception."

(*a*) See Summary Jurisdiction Act, 1879, s. 4.

(*b*) See *ib.*, 1879, s. 17.

may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and the ground thereof:

(3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace, with or without sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just (*c*).

Definitions.

13. In this Act,—

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the per-

(*c*) See Summary Jurisdiction Act, 1879, s. 32.

formance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same (*d*) ; and

The expression "court of summary jurisdiction" means—

(1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room ; and

(2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division ; and

(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf ; and

(4.) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act : provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, "An Act to provide for the regulation of municipal corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of

(*d*) Summary Jurisdiction Act, 1879.

supplying such city, borough, town, or place, or part thereof, with gas or water.

15. The word "maliciously," used in reference to any offence under this Act, shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

Saving Clause.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service.

Repeal.

17. On and after the commencement of this Act, there shall be repealed :—

I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of her present Majesty, chapter thirty-two, intituled "An Act to amend the criminal law relating to violence, threats, and molestation ;" and

II. "The Master and Servant Act, 1867," and the enactments specified in the first schedule to that Act, with the exceptions following as to the enactments in such schedule, that is to say :

(1.) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King George the Third, chapter fifty-five, intituled "An Act to authorise justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usage of such their apprentice ; and also to make provision for the execution of warrants of distress granted by magistrates," as relates to constables, overseers, and other peace or parish officers ; and

(2.) Except so much of sections five and six of an Act passed in the fifty-ninth years of the reign of King George the Third, chapter ninety-two, intituled "An Act to enable justices of the peace in Ireland to act as such, in certain cases, out of the limits of the counties in which they actually are ; to make provision for the execution of warrants of distress granted by them ; and to authorise them to impose fines upon constables and other officers for neglect of duty, and on masters for ill-usage of their apprentices," as relates to constables and other peace or parish officers ; and

(3.) Except the Act of the session of the fifth and sixth years of the reign of her present Majesty, chapter seven, intituled "An

Act to explain the Acts for the better regulation of certain apprentices;" and

(4.) Except sub-sections one, two, three, and five of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," relating to certain disputes between employers and the persons employed by them; and

III. Also there shall be repealed the following enactments making breaches of contract criminal and relating to the recovery of wages by summary procedure, that is to say:

(*a.*) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled "An Act touching dyvers orders for artificers, labourers, servantes of husbandrye, and apprentices;" and

(*b.*) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled "An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for better payment of their wages," as relates to departing from service and quitting or returning work before it is finished; and

(*c.*) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words "An Act for repealing several laws relating to the manufacture of woollen cloth in the county of York," and ends with the words "for preserving the credit of the said manufactures at the foreign market;" and

(*d.*) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled "An Act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manufactory;" and

(*e.*) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of her present Majesty, chapter ninety-one, intituled "An Act for the more effectual prevention of frauds and abuses committed by weavers, sewers, and other persons employed in the linen, hempen, union, cotton, silk, and woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the next session of Parliament;" and

(*f.*) Section seventeen of an Act passed in the session of the sixth and seventh years of her present Majesty, chapter forty, the title of which begins with the words "An Act to amend the laws," and ends with the words "workmen engaged therein;" and

(*g.*) Section seven of an Act passed in the session of the eighth and ninth years of her present Majesty, chapter one hundred and twenty-eight, and intituled "An Act to make further

regulations respecting the tickets of work to be delivered to silk weavers in certain cases."

Provided that,—

(1.) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise; and

(2.) The repeal enacted by this section shall not affect—

(*a.*) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed; or

(*b.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*c.*) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Application of Act to Scotland.

18. This Act shall extend to Scotland, with the modifications following: that is to say,

(1.) The expression "municipal authority" means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867:

(2.) The expression "The Summary Jurisdiction Act" means the Summary Procedure Act, 1864, and any Acts amending the same:

(3.) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

19. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act:—

(1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the lord advocate or of the procurator fiscal of the sheriff court:

(2.) The proceedings may be on indictment in the Court of Justiciary in Edinburgh, or on circuit, or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864:

(3.) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within

a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of schedule K. of the Summary Procedure Act, 1864:

(4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

20. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit court of justiciary, or where there are no circuit courts, to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of his Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

Application of Act to Ireland.

21. This Act shall extend to Ireland with the modifications following, that is to say:—

The expression "The Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace, or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions:

The expression "municipal authority" shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, entitled "An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

39 & 40 VICT. c. 22.

ARRANGEMENT OF CLAUSES.

Clause.
1. Construction and short title.
2. Trade unions to be within s. 28 of Friendly Societies Act, 1875.
3. Amendment of s. 8 of principal Act.
4. Provision in case of absence, &c., of trustee.
5. Jurisdiction in offences.
6. Registry of unions doing business in more than one country.
7. Life Assurance Companies Acts not to apply to registered unions.
8. Withdrawal or cancelling of certificate.
9. Membership of minors.
10. Nomination.
11. Change of name.
12. Amalgamation.
13. Registration of changes of names and amalgamations.
14. Dissolution.
15. Penalty for failure to give notice.
16. Definition of "trade union" altered.

An Act to amend the Trade Union Act, 1871 (1876).

WHEREAS it is expedient to amend the Trade Union Act, 1871 :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act and the Trade Union Act, 1871, hereinafter termed the principal Act, shall be construed as one Act, and may be cited together as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Act Amendment Act, 1876."

2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875.

3. Whereas by section eight of the principal Act it is enacted that "the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch :" The said section shall be read and construed as if immediately after the hereinbefore recited words

there were inserted the words "or of the trustees of the trade union, if the rules of the trade union so provide."

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the Accountant-General or deputy or assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

5. The jurisdiction conferred in the case of certain offences by section twelve of the principal Act upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

6. Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

In this section "country" means England, Scotland, or Ireland.

7. Whereas by the "Life Assurance Companies Act, 1870," it is provided that the said Act shall not apply to societies registered under the Acts relating to Friendly Societies: The said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of friendly societies, or

in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and in the following cases :

(1.) At the request of the trade union to be evidenced in such manner as such chief or assistant registrar shall from time to time direct :

(2.) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months' previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith) shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding fifty pounds shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent ; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

11. A trade union may, with the approval in writing of the chief registrar of friendly societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

12. Any two or more trade unions may, by the consent of not less than two-thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them ; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the central office established by the Friendly Societies Act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same shall be sent within fourteen days thereafter to the central office hereinbefore mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and shall be registered by them : Provided, that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than

five pounds, recoverable at the suit of the chief or any assistant registrar of friendly societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

16. So much of section twenty-three of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows :

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

CHAPTER XIV.

EMPLOYERS AND WORKMEN ACT.

(38 & 39 VICT. c. 90, 1875).

ARRANGEMENT OF CLAUSES.

Preliminary.

Clauses.

1. Short title.
2. Commencement of Act.

PART I.

Jurisdiction—Jurisdiction of County Court.

3. Power of county court as to ordering of payment of money, set-off, and rescission of contract, and taking security.

Court of Summary Jurisdiction.

4. Jurisdiction of justices in disputes between employers and workmen.
5. Jurisdiction of justices in disputes between masters and apprentices.
6. Powers of justices in respect of apprentices.
7. Order against surety of apprentice, and power to friend of apprentice to give security.

PART II.

Procedure.

8. Mode of giving security.
9. Summary proceedings.

PART III.

Definitions and Miscellaneous.

Definitions.

10. Definitions: "Workman," "The Summary Jurisdiction Act."
11. Set-off in case of factory workers.

Application.

Clauses.

12. Application to apprentices.

Saving Clause.

13. Saving of special jurisdiction, and seamen.

PART IV.

Application of Act to Scotland.

14. Application to Scotland. Definitions.

PART V.

Application of Act to Ireland.

15. Application to Ireland.

CHAPTER XC.

An Act to enlarge the Powers of County Courts in respect of Disputes between Employers and Workmen, and to give other Courts a limited Civil Jurisdiction in respect of such Disputes.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

Preliminary.

1. This Act may be cited as the Employers and Workmen Act, 1875.

2. This Act, except so far as it authorises any rules to be made or other thing to be done at any time after the passing of this Act, shall come into operation on the first day of September one thousand eight hundred and seventy-five.

PART I.

Jurisdiction—Jurisdiction of County Court.

3. In any proceeding before a county court in relation to any dispute between an employer and a workman (*a*) arising out of or incidental to their relation as such (which dispute (*b*) is hereinafter referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say,

(*a*) The Act does not define "employer." As to "workmen," see s. 10.

(*b*) This includes a claim for damages and loss caused by a workman leaving his employment without giving previous notice to his employer, though before summons no claim had been made; *Clemson* v. *Hubbard* (1876), L. R. 1 Ex. D. 179; 45 L. J. M. C. 69; 33 L. T. N. S. 816; 24 W. R. 312.

(1.) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise (*c*) ; and,

(2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind (*d*) any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just ; and,

(3.) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

(*c*) *Grainger* v. *Aynsley* (1880), L. R. 6 Q. B. D. 182 ; 29 W. R. 242. (The appellant, a potter's printer, under a contract to work from Martinmas to Martinmas, subject to a notice of a month on either side. He was necessarily assisted by "transferrers," whom he paid and engaged ; held that the appellant was a "workman," and that he was liable to pay damages, though the breach of contract arose from the transferrers' refusal to work.)

As to claims by master against infant, see *Leslie* v. *Fitzpatrick* (1877), L.R. 3 Q. B. D. 229 ; 47 L. J. M. C. 22 ; 37 L. T. N. S. 446. The following cases bear upon this section : —*Routledge* v. *Hislop* (1860), 29 L. J. M. C. 90. (Judgment in action by servant in County Court for a wrongful dismissal is a bar to proceedings before justices to recover quarter's wages.) *Millett* v. *Coleman* (1873), 44 L. J. Q. B. 194 ; 33 L. T. N. S. 204. (Summons for wages, heard by justices under the Master and Servant Act, 1867, dismissed ; plaintiffs then issued plaints for the same in County Courts ; judgment for the defendant on the grounds that the matter was *res judicata*.

Hindley v. *Haslam* (1878), L. R. 3 Q. B. D. 481. (Appellant employed by respondents as a spinner ; discharged for neglecting his work. The respondents refusing to pay wages in lieu of notice, appellant took proceedings against respondents in the County Court. No counter-claim or set-off filed or set up ; but evidence was produced to show appellant guilty of negligence. Verdict for £3 10*s.* ; held that the respondents were not precluded from preferring a claim before the justices under ss. 3 & 4, for wrongfully and negligently damaging materials.)

Upon a complaint under 20 Geo. II., c. 19, by an artificer for wages due by his employer, the justices were at liberty to take into account the quality of the work, and to make a deduction from the wages for bad workmanship. *Sharp* v. *Hainsworth* (1862), 32 L. J. M. C. 33.

(*d*) Under this section the Scotch Courts have held that it is competent to disregard arbitration clauses in contracts of service. *Wilson* v. *Glasgow Tramways Co.* (1878), 5 R. 981 ; *Glasgow Tramway Co.* v. *Dempsay* (1877), 3 Coup. 440 ; but see *London Tramways Co.* v. *Bailey* (1877), L. R. 3 Q. B. D. 127.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

Court of Summary Jurisdiction.

4. A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on a county court: provided that in any proceeding in relation to any such dispute the court of summary jurisdiction—

(1.) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and

(2.) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case; and

(3.) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

5. Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such (*e*) (which dispute is hereinafter referred to as a dispute under this Act), may be heard and determined by a court of summary jurisdiction.

6. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

(1.) It may make an order directing the apprentice to perform his duties under the apprenticeship; and,

(*e*) Under 4 Geo. IV. c. 34, s. 2, magistrates had jurisdiction, though summons taken out after relation of master and apprentice had ceased; *R.* v. *Proud* (1867), L. R. 1 C. C. R. 71; 36 L. J. M. C. 62.

(2.) If it rescinds the instrument of apprenticeship it may, if it thinks it is just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

7. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

Part II.

Procedure.

8. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to rules with respect to giving security under this Act.

9. Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act (*f*), but shall

(*f*) 11 & 12 Vict. c. 43, and 42 & 43 Vict. c. 49.

not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869, and may be enforced accordingly (*g*); and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made, in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

Part III.

Definitions and Miscellaneous.

Definitions.

10. In this Act—

The expression "workman" does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer,

(*g*) In *Cutler* v. *Turner* (1874), L. R. 9 Q. B. 502; 43 L. J. M. C. 124; 30 L. T. 706; 22 W. R. 840, the Court held there was a right under the repealed Master and Servant Act, 1867 (30 & 31 Vict. c. 141), to recover a sum as compensation for breach of contract of service, though the appellant had been previously ordered to fulfil the same contract, and to be imprisoned for not doing so. See *Evans* v. *Wills* (1876), 45 L. J. C. P. 420.

servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing (*h*), and be a contract of service or a contract personally to execute any work or labour (*i*).

(*h*) This does away with the effect of *Banks* v. *Crosslands* (1874), 10 L. R. Q. B. 97; 44 L. J. M. C. 8; 32 L. T. N. S. 226; 23 W. R. 414. But the section does not affect the Statute of Frauds.

Under the Master and Servant Act of 1867, it was held that a married woman could not enter into a contract within the meaning of the Act; *Tomkinson* v. *West* (1875), 32 L. T. N. S. 462. But see the Married Women's Property Act of 1882, sec. 1 (2).

(*i*) See *Grainger* v. *Aynsley* note (*a*), where Lindley, J., observes: "What the exact meaning of the distinction between 'contract of service' and 'contract personally to execute any work or labour' may be is not quite easy to see. The words may refer to a contract to serve, say for a month, as distinguished from a 'contract' to execute any work or labour, say to dig a drain. That may or may not be the distinction. 'Manual labour' is the key-note to it, and, if so, the appellants are within it." Lopes, J., observed, in the same case: "I should say that a contract of service is when a man is employed, say, as farm labourer, for three months or one year, and that the other words, 'contract personally to execute any work or labour,' apply to cases where a man is employed to do any specific work or labour." Assistance in construing this section may be obtained from the chief decisions under the repealed Act 4 George IV., c. 34, which applied to any servant in husbandry, or "any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person." It did not contain the words contract "personally to execute any work or labour," or their equivalent; and the Courts required proof of service, or of a contract to serve. WITHIN THE STATUTE (4 Geo. IV. c. 34). *Ex parte Ormerod* (1844), 13 L. J. N. S. M. C. 73; 1 D. & L. 825. (A designer who contracted to serve a calico printer for a term of years, and whose duty it was to draw patterns, to be afterwards engraved on copper rollers, "an artificer.") *In re Bailey* (1854), 3 E. & B. 607; 23 L. J. N. S. M. C. 161. (Contract to serve as a collier until a month's notice on either side; wages to be 1*s.* 10*d.* per ton of coals, paid monthly; evidence of obligation to serve personally.) *Ex parte Gordon* (1855), 25 L. J. N. S. M. C. 12; 3 W. R. 568. (A journeyman tailor working with others for a master tailor on the premises of the latter; paid at a certain price per garment. The contract did not extend beyond the job, but, while executing it, the former was bound to work exclusively for his employer.) *Willett* v. *Boote* (1860), 30 L. J. N. S. M. C. 6; 6 H. & N. 26. (B., a potter, engaged W. to work for him as a biscuit oven-placer, at daily wages for a year. By another agreement of the same date, B. engaged R. to work for him by piece-work, for the same time, as biscuit oven-fireman. R. paid W. his wages out of the amount earned by R. for piece-work. A contract of master and servant subsisted between B. and W., notwithstanding the fact that payments of wages were made to W. by R.) *Lawrence* v. *Todd* (1863), 14 C. B. N. S. 554; 32 L. J. M. C. 238. (T., with six other artisans, agreed under a written contract to complete an iron ship; they were to work exclusively for the appellant, but were at liberty to employ skilled and unskilled workmen to assist them.) *Whiteley* v. *Armitage* (1864), 13 W. R. 144. (A stuff-finisher of Italian goods, who worked manually for weekly wages and a commission, but who directed other workmen.) NOT WITHIN THE ACT.—

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same.

The expression "court of summary jurisdiction" means—

(1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and

(2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and

(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4.) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, a complaint under this Act shall be heard and determined and an order for imprisonment made by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate in respect of any act or jurisdiction which may now be done or exercised by him out of court.

Hardy v. *Ryle* (1829), 9 B. & C. 603. (Contract to weave certain pieces of silk goods.) *Lancaster* v. *Greaves* (1829), 9 B. & C. 628. (A. contracted to build a wall for a certain price, and within a certain time.) *Ex parte Johnstone* (1839), 7 Dow. 702. (A contract to "print certain pieces of woollen cotton goods.") *Davies* v. *Berwick* (1861), 3 E. & E. 549; 30 L. J. M. C. 84. (A person engaged in keeping the accounts of a farm, setting the men to work, and lending a helping hand when wanted, &c., not a "servant in husbandry," or "other person.") Under the repealed 20 Geo. II. c. 19 (which gave jurisdiction to justices in disputes between masters and mistresses, and servants in husbandry, who shall be hired for one year or longer (extended by 31 Geo. II. c. 11, s. 3, to all servants in husbandry, though hired for less time than a year), or between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time or in any other manner), it was held that a labourer employed to "dig and stean a well" for cattle, who was to be paid by the foot, and who employed another to assist him, was within the Act. *Lowther* v. *Radnor* (1806), 8 East, 113. So in *Bramwell* v. *Penniek* (1827), 7 B. & C. 536, a person employed by an attorney to keep possession of goods seized under a *fi. fa.* In *Ex parte Hughes* (1854), 23 L. J. N. S. M. C. 138, a dairymaid at a farm, who had also to keep house and cook for men-servants, was held to be within the Act.

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874 (*k*), any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work (*l*).

Application.

12. This Act in so far as it relates to apprentices shall apply only to an apprentice to the business of a workman as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid

(*k*) These Acts are repealed.

(*l*) See as to forfeiture of wages the following cases: *Walsh* v. *Walley and another* (1874), L. R. 9 Q. B. 367; 43 L. J. Q. B. 102. (Plaintiff, a weaver, and weekly servant, whose wages depended upon the number of pieces which he wove. The wages were ascertained at noon on Thursday, and paid next Saturday. The rules under which he worked required fourteen days' notice before leaving; and persons leaving without notice were to forfeit wages due. 15*s.* were ascertained as due on Thursday, April 25th, 1872, at noon; the plaintiff worked on the 26th, and earned 7*s.*, and then left without notice. Held that the plaintiff had forfeited the 15*s.* and 7*s.* *Willis* v. *Thorp* (1875), L. R. 10 Q. B. 383; 44 L. J. Q. B. 137. (See Hosiery Manufacture (Wages) Act, 1874, and p. 384.) *Saunders* v. *Whittle* (1876), 33 L. T. N. S. 816; 24 W. R. 406. (Plaintiff hired by the week; his wages 7*d.* an hour, payable every Saturday at noon. The full week consisted of fifty-four and a half hours, ending at 5.30 p.m. on Friday. Overtime paid at the same rate. Engagement determinable by a week's notice on either side. Plaintiff left without notice on Friday at noon before the week had ended. He had worked fifty-seven hours, including overtime, since the previous Friday. Held that the plaintiff could not recover wages for current week on the ground that he was engaged by the week, though his wages were computed by the hour.) See also *Button* v. *Thompson*, L. R. 4 Q. B. 367; *Greyson* v. *Watson* (1876), 34 L. T. N. S. 143. (A factory winder, paid on Saturday for the sets which she had wound off during the preceding week, ending Wednesday night, absented herself from work on Saturday and Monday, after working Thursday and Friday, and doing work to the value of 3*s.* 7*d.*, and did not return. By one of the rules of the factory, fourteen days' notice was required, and all persons leaving without notice were to forfeit the whole of the wages to which they would otherwise be entitled. The County Court Judge assessed the damages at 3*s.*, and found that the hiring was a weekly hiring; held that there were no wages or sum due, the hiring being weekly, and the servant having left without notice.) *Warburton* v. *Heyworth* (1880), L. R. 6 Q. B. D. 1; 50 L. J. Q. B. 137. (A factory weaver, paid by the piece, all work being booked up at three o'clock on Wednesday afternoon in each week, and paid for on Saturday. The cuts which she had completed were, in accordance with the practice of the factory, booked on Wednesday; the value of the cuts, 13*s.* 4*d.* She returned to her work on Wednesday for a quarter of an hour, and then left without giving notice. By the rules of the factory, fourteen days' notice was necessary, on pain of forfeiture of wages. The justices found that the hiring was weekly. But the Court of Appeal was of opinion that there was not a weekly hiring; that a sum became due as each piece was finished; and that, as there was no damage, the appellant was entitled to recover in a claim for wages.)

does not exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

Saving Clause.

13. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

This Act shall not apply to seamen or to apprentices to the sea service.

[Section 14 extends the Act to Scotland.]

[Section 15 extends the Act to Ireland.]

RULES OF 1877 UNDER "THE EMPLOYERS AND WORKMEN ACT, 1875."

The rules made under the powers contained in "The Employers and Workmen Act, 1875," and which are now in use in courts of summary jurisdiction in England, shall, on and from the 1st day of November 1877, cease to be used, and from such day there shall be used in lieu thereof, the following rules :—

1. A person desirous to enter an action in a court of summary jurisdiction in England under "The Employers and Workmen Act, 1875," shall deliver to the clerk of the court particulars in writing of his cause of action, and the clerk of the court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names, addresses, and descriptions of the parties, and the substance of the action intended to be brought ; and thereupon a summons to appear to the plaint shall be issued according to the form in the schedule, and a copy thereof be served in the manner hereinafter provided, not less than four clear days before the return-day of the summons ; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

2. The particulars shall be annexed to and be deemed part of the summons.

3. Such summons may issue in any district in which the defendant or one of the defendants dwelt or carried on his business or was employed at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the plaint.

4. Service of a summons to appear to a plaint may be made by serving a copy of the same personally upon the defendant, or by leaving such copy with some person, apparently sixteen years old, at the house or place of dwelling or place of business or of employment of the defen-

dant, or of one of the defendants, or at the office of his or their employer for the time being.

Witnesses.

5. Summonses to witnesses shall be granted to either party on application and payment of the fees for the issuing and service of the same, and of the proper amount of conduct money.

Hearing.

6. A defendant shall not, except by leave of the court, on such terms as to it may seem fit, be permitted to set up against the claims of the plaintiff any set-off or counter-claim, unless he shall have served, or cause to be served, by registered post letter or otherwise, two clear days at least before the return day, a notice directed to the plaintiff at his address as mentioned in the summons, stating his intention to rely upon such set-off or counter-claim as a defence to the action, and setting forth the particulars of such set-off or counter-claim.

7. Where service of any notice is made by post, it shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post.

8. If upon the return-day of any summons, or at any continuation or adjournment of the court, the plaintiff shall not appear, the cause may be struck out, and the court may award to the defendant, by way of costs and satisfaction for his attendance, such sum as it in its discretion shall think fit ; but the plaintiff may bring a fresh action in respect of the same cause of complaint.

9. If on the day named in the summons, or at any continuation or adjournment of the court, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the court, upon due proof of service of the summons, may either adjourn the cause from time to time or hear it *ex parte*, and the judgment thereupon shall be as valid as if both parties had attended ; provided that the court in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial upon such terms, if any, as it may think fit (*m*).

10. Every undertaking by way of security under the said Act may be given to the court, or to such person as the court may direct, in writing or orally ; and upon the production of the written undertaking, or of any note made by the clerk of the court where the undertaking was given orally, the court may summon any person liable to the court or to any surety for any sum which has become forfeited, and may make such order therein as to the court may seem fit.

(*m*) See 20 & 21 Vict. c. 43.

Enforcing Judgment.

11. Any sum adjudged by the court to be paid under the said Act, and any instalment or part thereof which has become due, and any sum ordered by the court to be paid in respect of the forfeiture of any sum under any security given under the said Act, may be recovered by distress-warrant in the form in the schedule issued by any justice or magistrate acting in and for the district for which the court was held; provided always, that the person liable for the payment of any such sum shall have been at some time served with the order of the court in the same manner as a summons to appear to a plaint is hereby directed to be served.

12. When an order has been made directing an apprentice to perform his duties under his apprenticeship, and he shall have failed to comply therewith, no order of commitment shall be made on account of his having so failed until he shall have been personally served with a judgment summons.

Judgment Summons.

13. No order of commitment under "The Debtors Act, 1869," shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment-summons, shall have been personally served upon the judgment-debtor.

14. A judgment-summons may issue although no distress-warrant has been applied for, and its service where made out of the district may be proved by affidavit.

15. Every judgment-summons may be according to the form in the schedule, and shall be served not less than two clear days before the day on which the judgment-debtor or apprentice is required to appear, except the judgment-debtor or apprentice is stated to be about to remove or to be keeping out of the way to avoid service.

16. The hearing of a judgment-summons may be adjourned from time to time.

17. Any witness may be summoned to prove the means of the judgment-debtor, in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint.

18. An order of commitment made under "The Debtors Act, 1869," may be according to the form in the schedule, and shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no longer.

19. When an order of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the officer holding such order the amount indorsed thereon as that on the payment of which he may be discharged;

and on receiving such amount the officer shall discharge the defendant, and shall forthwith pay over the amount to the clerk of the court.

20. The sum indorsed on the order of commitment as that upon payment of which the prisoner may be discharged may be paid to the clerk of the court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is. Where it is paid to the clerk he shall sign and seal a certificate of such payment, and upon receiving such certificate by post or otherwise, the gaoler in whose custody the prisoner shall then be shall forthwith discharge such prisoner. And where it is paid to the gaoler, he shall, upon payment to him of such amount, together with costs sufficient to pay for transmitting by post-office order or otherwise such amount to the court under the order of which the prisoner was committed, sign a certificate of such payment, and discharge the prisoner, and forthwith transmit the sum so received to the clerk of the court.

21. A certificate of payment by the prisoner shall be according to the form in the schedule.

22. All costs incurred by the plaintiff in endeavouring to enforce an order shall be deemed to be due in pursuance of such order under section 5 of "The Debtors Act, 1869," unless the court shall otherwise order.

Service of Process.

23. Service of any summons, order, or process under the Act or these rules may be made by any officer duly authorised to serve summonses within the district in which the summons, order, or process is to be served, and may be proved by affidavit, or by oath *viva voce*.

Costs.

24. The costs to be paid in the first instance by every person seeking the assistance of the court shall be those contained in the schedule annexed hereto.

25. The court may, in its discretion, allow any party, in respect of any expense he may have incurred in the employment of a solicitor, any sum not exceeding ten shillings where the sum claimed exceeds forty shillings, and not exceeding fifteen shillings where it exceeds five pounds.

Forms.

26. The forms given in the schedule shall be used, with such variations as may be necessary to meet the circumstances of each court.

29th August, 1877.

CAIRNS, C.

SCHEDULE.

1.

SUMMONS TO APPEAR.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions district of* .]
Between A. B., Plaintiff,
[*Address, description,*]
and
C. D., Defendant,
[*Address, description.*]

You are hereby summoned to appear on the day of 18 , at the hour of in the noon, at , before [*two of such justices of the peace for the above county as might there be*], to answer the plaintiff, to a claim, the particulars of which are hereunto annexed.

Given under my hand and seal this day of 18 .

J. S. (L.S.)

To the defendant herein

NOTE.—(This, and all other summonses issued under the Employers and Workmen Act, 1875, may be signed by the clerk to the justices, where such justices shall, by a general direction, authorise their clerks to sign them in lieu of one of themselves).

2.

SUMMONS TO WITNESS.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of* .]
Between A. B., Plaintiff,
and
C. D., Defendant.

You are hereby required to attend at on , the day of , 187 , at the hour of in the noon, to give evidence in the above cause on behalf of the [*plaintiff* or *defendant, as the case may be*].

Given under my hand and seal this day of 187 .

J. S. (L.S.)

To

3.

JUDGMENT FOR PLAINTIFF.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of* .
Between A. B., Plaintiff,
and
C. D., Defendant.

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt [*or* damages], and £ for costs, amounting together to the sum of £ .

And it is ordered that the defendant do pay the same to the plaintiff on or before the day of [*or* by instalments of for every days; the first instalment to be paid on or before the day of 18]; and if the same be not paid as ordered it is hereby further ordered that the same be levied by distress and sale of the goods and chattels of the said defendant.

Given under our hands and seals this day of .

	£	s.	d.
Amount of debts or damages			
Costs :—	£	s.	d.
Summons			
Witnesses			
This order			
Total			

Signatures of two of the Justices by whom order made. } J. S. (L.S.)
} J. S. (L.S.)

4.

JUDGMENT FOR DEFENDANT.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*]
Between A. B., Plaintiff,
and
C. D., Defendant.

Upon hearing this cause this day, it is adjudged that judgment be entered for the defendant, and that the plaintiff do pay the sum of £ for the defendant's costs on or before the day of ; and if the same be not paid as ordered it is hereby further

ordered that the same be levied by distress and sale of the goods and chattels of the said plaintiff.

Given under our hands and seals this day of , 187 .

Signatures of two of the Justices by whom order made. } J. S. (L.S.)
} J. S. (L.S.)

5.

JUDGMENT SUMMONS.

Employers and Workmen Act, 1875, *and The Debtors Act*, 1869.

In the [*county of* . *Petty Sessions District of* .]
Between A. B., Plaintiff,
[*Address, description*,]
and
C. D., Defendant,
[*Address, description.*]

Whereas the plaintiff [*or* defendant] obtained an order against you the above-named defendant [*or* plaintiff] in this court on the day of , 187 , for the payment of pounds, shillings, and pence [*or* that you (*here set out the order made, in the case of an apprentice, upon him to perform his duties*)] :

And whereas you have made default therein :

You are therefore hereby summoned to appear personally in this court at [*place where court holden*] on , the day of , 18 , at the hour of in the noon * to be examined on oath by the court touching the means you have or have had since the date of the order to satisfy the sum payable in pursuance of the said order ; and also * to show cause why you should not be committed to prison for such default.

Given under my hand and seal this day of , 187 .

J. S. (L.S.)

	£	s.	d.
*Amount of order, and costs			
Costs of distress against the goods, if any . .			

	£	s.	d.
Deduct { Paid into court . . .			
Instalments which were not required to have been paid before the date of the summons			

Sum payable . . . . . .
Costs of this summons . . . . . .

Amount upon the payment of which no further proceedings will be had until default in payment of next instalment . . . . . .*

* *The parts within asterisks to be omitted where summons issued against an apprentice under section* 6 *of Employers and Workmen Act*, 1875.

6.

ORDER OF COMMITMENT.

Employers and Workmen Act, 1875, *and The Debtors Act*, 1869.

In the [*county of* . *Petty Sessions District of* .]
Between A. B., Plaintiff,
and
C. D., Defendant.

To the constable of and all other peace officers of the county, and to the governor or keeper of the [*prison of the county to which debtors are committed*].

Whereas the plaintiff [*or* defendant] obtained an order against the defendant [*or* plaintiff] in this court on the day of , 18 , for the payment of £ [*or, in the case of an apprentice*, that he should, &c.] :

And whereas the defendant had made default therein :

And whereas a summons was, at the instance of the plaintiff [*or* defendant] duly issued out of this court, by which the defendant [*or* plaintiff] was required to appear personally at this court on the day of , 187 ,* to be examined on oath touching the means he had then or has had since the date of the order to satisfy the sum then due and payable in pursuance of the order, and * to show cause why he should not be committed to prison for such default :

And whereas, at the hearing of the said summons, the defendant [*or* plaintiff] appeared [*or* the summons was proved to have been personally and duly served] and * it has now been proved to the satisfaction of the court that the defendant [*or* plaintiff] now has [*or* has had] since the date of the order the means to pay the sum then due and payable in pursuance of the order, and has refused [*or* neglected] [*or* then refused or neglected] to pay the same, and the defendant [*or* plaintiff] * has shown no cause why he should not be committed to prison :

Now, therefore, it is ordered that, for such default as aforesaid, the defendant [*or* plaintiff] shall be committed to prison for days, * unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged.*

These are, therefore, to require you, the said constable and peace officers, to take the defendant [*or* plaintiff] and to deliver him to the governor or keeper of the [*prison aforesaid*], and you the said governor or keeper to receive the defendant [*or* plaintiff] and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under our hands and seals this [*insert date of order of commitment*] day of , 18 .

Signatures of two of the Justices by whom order of committal is made. } J. S. (L.S.)
} J. S. (L.S.)

	£	s.	d.
*Total sum payable at the time of hearing of the judgment-summons			
Hearing of summons, cost of this order, and mileage			
Total sum upon payment of which the prisoner will be discharged prior to conveyance to prison .			
If conveyed to prison the conveyance thereto .			

*

* *The parts within asterisks to be omitted where order made under section* 6 *of Employers and Workmen Act,* 1875.

7.

CERTIFICATE FOR THE DISCHARGE OF A PRISONER FROM CUSTODY.

Employers and Workmen Act, 1875, *and the Debtors Act,* 1869.

In the [*county of . Petty Sessions District of*].

Between A. B., Plaintiff,

and

C. D., Defendant.

I hereby certify that the defendant [*or* plaintiff] who was committed to your custody by virtue of an order of commitment under the seals of two justices of this court, bearing date the day of , 187 , has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; and that the defendant [*or* plaintiff] may, in respect of such order, be forthwith discharged out of your custody.

Dated this day of , 187 .

Clerk of the Court

To the Governor or Keeper of .

8.

DISTRESS WARRANT.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*].
Between A. B., Plaintiff,
and
C. D., Defendant.

Whereas at a court holden at on the day of 18 , it was ordered by the court that judgment should be entered for the plaintiff [*or* defendant], and that the plaintiff [*or* defendant] should, pay to the defendant [*or* plaintiff] the sum of £ for debt [*or* damages] and costs [*or* the defendant's costs of action] on or before the day of , [*or* by instalments of for every days, the first instalment being ordered to be paid on or before the day of 18]; and that if the same were not paid as ordered, it was further ordered that the same should be levied by distress and sale of the goods and chattels of the said defendant [*or* plaintiff]:

And whereas default has been made in payment according to the said order: These are therefore to command you forthwith to levy the sum of £ , being the amount due to the plaintiff [*or* defendant] under the said order, by distress of the goods and chattels of the plaintiff (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), together with the reasonable charges for taking and keeping the said distress; and that you do pay what you shall have so levied to the clerk of this court.

Given under my hand and seal this day of 187 .
J.S. (L.S.)

To the Constable of ,
and all other Peace Officers
in the county.

NOTICE.—The goods and chattels are not to be sold until after the end of five clear days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant [*or* plaintiff] (*n*).

(*n*) See Summary Jurisdiction Act of 1879, ss. 21 & 43.

9.

UNDERTAKING IN WRITING BY DEFENDANT TO PERFORM CONTRACT.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*].

Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas it has been found by this court on the day of , 187 , that the defendant had broken the contract for the breach of which he was summoned:

And whereas the court would have awarded to the plaintiff the sum of £ by way of damages suffered by him in consequence of such breach, and would have ordered him to have paid such sum, but that the defendant was willing to give security for the performance by him of so much of the contract as remains unperformed:

Now therefore I the undersigned defendant, and we the undersigned sureties [*or* the undersigned surety], do undertake that the said defendant will perform so much of the said contract as remains unperformed, that is to say [*here set out so much of the contract as remains to be performed*]:

And I the said defendant, and we [*or* I] the said sureties [*or* surety] hereby severally acknowledge ourselves bound to forfeit to A. B., the plaintiff, the sum of pounds and shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(Signed, *where not taken orally*) C. D., Defendant.

E. F., } Sureties.
G. H., }

Taken before me this day of , 18 .

J. S. (L.S.)

NOTE.—*This undertaking may be given orally, and proved by the production of a note of the same made at the time by the clerk of the court.*

10.

ORDER ON AN APPRENTICE TO PERFORM HIS DUTIES.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*].

Between A. B., Plaintiff,

and

C. D., Defendant.

It is ordered that the defendant do forthwith perform the duties he has contracted to perform under his apprenticeship to the plaintiff.

Given under our hands and seals this day of 18 .

Signatures of two of the justices by whom order made. } J. S. (L.S.)
} J. S. (L.S.)

11.

ORDER RESCINDING A CONTRACT OF APPRENTICESHIP.

In the [*county of* . *Petty Sessions District of*].

Between A. B., Plaintiff,
and
C. D., Defendant.

It is adjudged that the [*or* this, *when order endorsed on deed of apprenticeship*] instrument of apprenticeship made between the plaintiff and defendant be rescinded, and that the plaintiff [*or* defendant] do pay to M. N. of the sum of pounds, being the whole [*or* a part] of the premium paid by the said M. N. on the binding of the defendant [*or* plaintiff] as apprentice to the plaintiff [*or* defendant].

Given under our hands and seals this day of 18 .

Signatures of two of the justices by whom order made. { J. S. (L.S.) J. S. (L.S.)

12.

ORDER WHERE SECURITY GIVEN FOR PERFORMANCE OF CONTRACT BY AN APPRENTICE.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*].

Between A. B., Plaintiff,
and
C. D., Defendant,
and
E. F., bondsman under the contract of apprenticeship of the Defendant.

Whereas on the day of 18 it was ordered that the defendant should forthwith perform the duties he had contracted to perform under his contract of apprenticeship to the plaintiff:

And whereas it hath been made to appear to the satisfaction of the court on the oath of the plaintiff [and of G. H. of] that the defendant has failed to comply with the requirements of the said order:

And whereas by the said failure the defendant hath rendered himself liable to be committed:

And whereas E. F. [*or* R. S. of] is willing to give security to the amount of pounds for the due performance by the defendant of his duties under his said contract of apprenticeship:

Now, therefore, the court doth direct such security to be forthwith given, and doth order that if payment of the said sum be not made on the defendant failing to perform his contract such sum may be levied by

distress of the goods and chattels of the said E. F. [*or* R. S.], or an application be made to this court for commitment of the said E. F. [*or* R. S.] according to the provisions of this Act.

Given under our hands and seals this day of 18 .

Signatures of two of the justices by whom order made. } J. S. (L.S.)
} J. S. (L.S.)

13.

SECURITY IN WRITING FOR PERFORMANCE OF CONTRACT BY AN APPRENTICE.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*].

Between A. B., Plaintiff,
and
C. D., Defendant,
and
E. F., bondsman under the contract of apprenticeship of the Defendant.

Whereas on the day of 18 it was ordered that the defendant should forthwith perform the duties he had contracted to perform under his contract of apprenticeship to the plaintiff:

And whereas it was made to appear to the satisfaction of the court that the defendant had failed to comply with the requirements of the said order:

And whereas by the said failure the defendant hath rendered himself liable to be committed:

And whereas I, E. F. [*or* R. S. of] am willing to and do hereby give security to the amount of pounds for the due performance by the defendant of his duties under the said contract of apprenticeship, and do hereby acknowledge myself bound to forfeit to the said plaintiff the above sum in case the said defendant do fail to perform the duties that have been ordered to be performed by the court.

(Signed) E. F. *or* R. S.

Signed before me this day of 187 .
J. S. (L.S.)

NOTE.—*The security may be given orally, and proved by the production of a note of the same made at the time by the clerk of the court.*

14.

[Summons to a Bondsman for an Apprentice.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*].
Between A. B., Plaintiff,
and
C. D. Defendant.

To E. F. of

Take notice that you are hereby summoned to attend at on the day of 18 , at o'clock in the noon, to show cause why the court should not, in addition to or in substitution for any order to be made against the said defendant, order you to pay the amount of any damages which it may find that the plaintiff has suffered in consequence of the breach of the contract of apprenticeship made between you and the plaintiff and the defendant.

Given under my hand and seal this day of 18 .
J. S. (L.S.)

15.

Order on a Bondsman for an Apprentice to pay Damages.

Employers and Workmen Act, 1875.

In the [*county of* . *Petty Sessions District of*].
Between A. B., Plaintiff,
and
C. D., Defendant,
and
E. F., bondsman under the contract of apprenticeship of the Defendant.

It is adjudged that the said bondsman do pay to the plaintiff, on or before the day of 18 , the sum of pounds for damages suffered by him in consequence of the breach of the contract of apprenticeship made between the plaintiff, defendant, and the said bondsman; and if the same be not paid as ordered, it is hereby further ordered that the same be levied by distress and sale of the goods and chattels of the said bondsman.

Given under our hands and seals this day of 18 .
Signatures of two of the justices by whom order made. J. S. (L.S.)
J. S. (L.S.)

16.

PLAINT AND MINUTE BOOK.

Employers and Workmen Act, 1875.

Date.	Plaintiff.	Residence.	Trade.	Defendant.	Residence.	Trade.	Particulars of dispute.	Order made.	Subsequent Proceedings.

COSTS.

	s.	*d.*
For entry of every plaint, including summons thereon .	1	0
For order in writing on a plaint	2	0
For every undertaking given by way of security . .	2	0
For judgment-summons, including hearing . . .	1	0
For warrant of distress or order of commitment . .	2	0
For summons to witness	1	0

N.B.—Where the sum claimed exceeds 1*l.*, or the sum in respect of the non-payment of which the summons for or order of commitment or warrant of distress issues exceeds 1*l.*, an additional fee of one shilling on each fee shall be taken.

For mileage in serving or executing process, and for cost of conveying to prison . . } Such reasonable cost as may be allowed by the Court.
For affidavit and postage . . . . }

29*th August*, 1877.

CAIRNS, C.

CHAPTER XV.

THE EMPLOYERS' LIABILITY ACT.

The Employers' Liability Act was passed to undo the effect of certain decisions noticed in Chapter XXIX., Part I. A series of cases beginning with *Priestley* v. *Fowler* (*a*), had laid it down that a master is not responsible to servants for the acts of their fellow servants. Some of the decisions were of doubtful justice; and the reasons given for them were conflicting and far from satisfactory.

A Select Committee of the House of Commons, which investigated the subject, reported in 1877, in favour of a change in the law.

"Your committee are of opinion," they said, "that in cases such as these, that is, where the actual employers cannot personally discharge the duties of masters, or where they deliberately abdicate their functions and delegate them to agents, the acts or defaults of the agents who thus discharge the duties and fulfil the functions of masters should be considered as the personal acts or defaults of the principals and employers, and should impose the same liability on such principals and employers, as they would have been subject to had they been acting personally in the conduct of their business, notwithstanding that such agents are technically in the employment of the principals. The fact of such a delegation of authority would have to be established in each case, but this would not be a matter of difficulty. Your committee are further of opinion, that the doctrine of common employment has been carried too far, when workmen employed by a contractor, and workmen employed by a person or company who has employed such contractor, are considered as being in the same common employment."

A bill carrying out the above suggestions was introduced

(*a*) 3 M. & W. 1.

into Parliament on the 17th March of 1879. It was withdrawn on 30th July of that year. It was re-introduced in February 1880, and referred to a Select Committee. In May, 1880, a bill was introduced, and after much discussion and considerable alterations, it was passed. It came into operation on January 1, 1881.

Contracting out of the Act.

Many workmen have contracted themselves out of the Act. Of the validity of such contracts there is no doubt. It is not contrary to public policy for a workman to agree to accept the risks of a lawful employment. As has been already explained (*b*), it is competent for an employer to invite persons to work for him in circumstances of danger; and if a workman, for the sake of wages, continue in dangerous employment with a knowledge of the risks, he must trust to himself to keep clear of injury (*c*).

This view has, in fact, been taken by the Queen's Bench Division in *Griffiths* v. *Dudley* (*d*). The plaintiff, a journeyman pit-sinker in one of the defendant's collieries, was killed owing to the negligence of an inspector of machinery. A club or benefit society, called "The Field Box," raised a fund by weekly contributions from the workmen employed in the defendant's collieries. The defendant contributed to this fund a sum equal to the aggregate of the contributions of the workmen. The fund was used in giving the workmen surgical aid in case of personal injuries received in their work, a weekly allowance in time of sickness, in paying funeral expenses, and in making allowances to widows and families in case of the death of workmen. When the Employers' Liability Act came into operation, a meeting of workmen, at which it was not proved Griffiths attended, took place. The men agreed to accept the old arrangement, and the defendant

(*b*) Chapter XXIX., Part I.

(*c*) See also Bramwell, B., in *Dynen* v. *Leach* (1857), 26 L. J. Ex. 221; and *McCawley* v. *Furness Railway Co.* (1872), L. R. 8 Q. B. 57; 42 L. J. Q. B. 4 (passenger travelling "at his own risk").

(*d*) L. R. 9 Q. B. D. 357; 51 L. J. Q. B. 543; 47 L. T. N. S. 10; 30 W. R. 797.

circulated among them printed conditions, by which all workmen were to be members of the club on the existing basis, and no workman, or in any case of death, no person entitled to look to the funds of the society for compensation, would be entitled to sue the defendant. Griffiths read these conditions, and continued to work as before, and to pay his subscription to the club. In an action by the widow, as executrix of the deceased, against the defendant, the county court judge gave judgment for her, on the ground that the contract was void for want of mutuality and consideration, and as being contrary to public policy. On appeal, this decision was reversed, the Court holding that such a contract was not contrary to public policy, and that the widow had no right of action.

The *ratio decidendi* in this case seems to show that employers might contract themselves out of any section or part of the Act; *e.g.*, they might agree with their workmen that information of defects mentioned in sec. 2, sub-sec. 3, be given to a certain specified "superior," and to him only.

To support an agreement to give up claims to compensation under the Act, consideration of some sort is required; and if the contract with respect to this be in writing, the consideration must be expressed (*e*).

Section 1 gives "the legal personal representatives of the workman and any persons entitled in case of death," "the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work." As stated above, it was decided in *Griffiths* v. *Dudley*, that the widow of a deceased workman could not sue when the latter had contracted himself and his representatives out of the Act. The principle of *Read* v. *Gt. Eastern Ry. Co.* (*f*), applies to the right conferred by the statute. There it was held to be a good plea to an action under 9 & 10 Vict. c. 93, by the plaintiff as widow of

(*e*) Chap. X.

(*f*) (1868), L. R. 3 Q. B. 555; 37 L. J. Q. B. 278.

a passenger, for negligence which had caused his death, that he had in his lifetime been paid, and had accepted, a sum of money in full satisfaction of all claims.

Contracts between masters and servants, by which the latter agree to waive the benefits of the Act, need not be in writing; though, for obvious reasons, it is, in practice, expedient to commit such a contract to writing. It might be concluded by posting up in mills or works printed regulations or notices, provided the workmen saw them before they were engaged (*g*).

A workman who has been injured may lose the benefit of the Act by accepting a sum as compensation for injuries which he has sustained (*h*); on the other hand, he will be deprived of all right to any penalty if he brings an action under the Act for the same cause of action (*i*). If a servant, who has been injured in circumstances which entitle him to compensation from his master, has been induced by fraud to give a receipt in full discharge, or execute a release, the receipt or release will not be conclusive, and need not prevent him from suing. The plaintiff in *Lee* v. *Lancashire & Yorkshire Ry. Co.* (*k*), had been injured in a collision on the defendants' railway, and gave on October 18th, 1865, a receipt for £400, "in discharge of my claim in full for all loss sustained." On the 6th Nov. of the following year, he commenced an action for £600, alleging that his injuries were more serious than had been supposed. The receipt which he had given was, in the view of the Court of Appeal, no bar to an action, if the plaintiff could show that it had been given upon the distinct understanding that it was not to be conclusive (*l*). In *Hirschfield* v. *London, Brighton, & South Coast Ry. Co.* (*m*), a release under seal had been given; but it was

(*g*) *Carus* v. *Eastwood* (1875), 32 L. T. N. S. 855.

(*h*) Addison on Torts, 4 ed. p. 46; *Wright* v. *London General Omnibus Co.* (1877), L. R. 2 Q. B. D. 271 (award of compensation by a magistrate under 6 & 7 Vict. c. 86, s. 28, against a driver of cab, bar to action against his employers by person injured).

(*i*) Sec. 5.

(*k*) (1871) L. R. 6 Ch. 527; 25 L. T. N. S. 77; 19 W. R. 729.

(*l*) See also *Stewart* v. *Great Western Ry. Co.* (1865), 2 D. J. & S. 319.

(*m*) (1876) L. R. 2 Q. B. D. 1; 46 L. J. Q. B. 94; 35 L. T. 473.

held to be a good reply to a defence founded on the deed that the defendants' officer had induced the plaintiff to execute the release, by fraudulently representing to him that the injuries were of a trivial character, and that if they turned out to be serious, he might obtain further compensation.

Insurance.

Employers have sought to insure themselves against liabilities under the Act. The usual plan is for an insurance company to agree, in consideration of annual payments varying with the amount of wages and nature of the employment, to indemnify employers against claims under the Act. An employer has an insurable interest, and such contracts are no doubt valid. An insurer who pays an assuree is, as a rule, subrogated to the remedies of the assuree, and this may have important consequences. (1) If the former indemnifies the latter for claims made by a workman injured by reason of the negligence of a foreman, what is the position of the insurer? The employer might sue his foreman, or the insurer after payment might, in the employer's name, also do so (*n*). (2.) If the insurer indemnifies the assuree for claims made under sec. 1, sub-sec. 1 of the Act, what is the position of the assuree? Suppose, for example, that A. purchased a crane from B. warranted to lift three tons. Under a strain of only two tons it broke, and one of A.'s workmen was injured. What is the position of C. the insurer? The workman would have no right to recover against A. unless A. himself or some one within sec. 2, sub-sec. 1, had been guilty of negligence. A. could not recover from B. in respect of damages which were the result, not of a breach of warranty, but of the negligence of A. or his agent; and C. would be in no better position (*nn*).

(*n*) Leake on Contracts, 754; May on Insurance, 554; *Commercial Union Assurance Co.* v. *Lister* (1874), L. R. 9 Ch. 483; *Hebdon* v. *West* (1863), 3 B. & S. 579; *Shilling* v. *Accidental Assurance Co.* (1858), 1 F. & F. 116.

(*nn*) *Ovington* v. *McVicar*, (1864), Macph. 1066. (O. paid damages to the relatives of a workman killed by the breaking of a chain. O. brought an action against M. who supplied the chain. Held, that the action did not lie).

The Effect of the Act on the Common Law.

(1.) The statute does not wholly do away with the doctrine of common employment. It does not affect such decisions as *Lovell* v. *Howell* (*o*). It merely specifies certain classes of servants for whose acts employers are liable to fellow servants. This is clearly affirmed in *Robins* v. *Cubitt* (*p*), where a workman who was injured by the improper lowering of a pail failed to recover; the accident having been caused by the negligence of two fellow workmen not in positions of authority, who were employed to lower the pail. The Employers' Liability Act, said Cave, J., in *Griffiths* v. *Dudley*, "provided that in five specified classes of cases, a workman might bring his action as if he had not been a workman, which I take to mean nothing more than this—viz.: that, when a workman brings his action within these five specified cases, the employer shall not be at liberty to say, 'You occupied the position of a workman in my service, and therefore you must be taken to have impliedly contracted to bear the consequences arising from the negligence of your fellow workmen in these five cases'" . . . . "In the five cases specified in sec. 1 of the Act, the workman shall not be held to have impliedly contracted to bear those risks" (*pp*).

(2). The statute does not apply to all servants, but merely to those who are defined as "workmen" by sec. 8 of the Employers and Workmen Act, 1875. Accordingly it does not apply to domestic servants or seamen, or to servants who are not engaged in manual work. Apparently the Act includes all railway servants of whatever grade, and whether engaged in manual labour or not (*q*). The Act does not seem to affect such decisions as *Degg* v. *Midland Ry. Co.* (*r*).

(3.) A workman's remedy at Common Law for injuries sustained in circumstances described in Chapter XXIX. is not

(*o*) (1876) L. R. 1 C. P. D. 161.
(*p*) (1881) 46 L. T. N. S. 535.
(*pp*) 47 L. T. p. 19.
(*q*) See. 8.
(*r*) (1857) 26 L. J. Ex. 171. Infants are within the definition of "workmen." As to the liability of infants who are employers for torts, see *Burnard* v. *Haggis*, 14 C. B. N. S. 45; 32 L. J. C. P. 189; *Walley* v. *Holt* (1876), 35 L. T. 631.

abolished. No doubt the terms of sec. 1 are unqualified; in the cases therein mentioned they appear to do away entirely with the doctrine of common employment. But, having regard to the other sections of the Act, and especially to the frequent recurrence of the phrase "under this Act," it is conceived that sec. 1 applies only to actions brought under the statute (*s*).

(4.) The statute merely places a workman in the same position as if he "had not been a workman of nor in the service of the employer, nor engaged in his work." Consequently all defences of which an employer might avail himself if a stranger were to sue him are open to an employer in resisting claims under the Act. (A.) One of these is contributory negligence. This has already been mentioned in Chapter XXVIII.; and it is enough to refer to such cases as *Radley* v. *London and North Western Ry. Co.* (*t*), and *Slattery* v. *Dublin, Wicklow, &c., Ry. Co.* (*u*). (B.) Acceptance of the risks of employment is another defence. See as to this, *Woodley* v. *Metropolitan Ry.* (*x*). (C.) A third defence is the fact that a servant who was negligent was not acting within the scope or sphere of his duties (*y*). (D.) The framers of the Act have defined the position of workmen by reference to an indefinite standard. They do not seem to have sufficiently borne in mind that several classes of persons with different rights are comprised in the negative description, "as if not workmen, &c." To trespassers who know the existence of defects in machinery or dangers, there may be no liability, even if such defects or dangers are known to the persons upon whose property they trespass (*z*). Servants are at Common Law

(*s*) Campbell's edition of Fraser's Law of Master and Servant, p. 173.

(*t*) (1876) L. R. 1 Ap. C. 754; 46 L. J. 573.

(*u*) (1878) L. R. 3 Ap. C. 1155; *Ellis* v. *L. B. & S. W.* (1857), 26 L. J. Ex. 349.

(*x*) (1877) L. R. 2 Ex. D. 384; also *Brooks* v. *Courtney* (1869), 20 L. T. 440; *Corby* v. *Hill* (1858), 4 C. B. N. S. 556.

(*y*) See Chap. XXVIII.

(*z*) *Degg* v. *Midland Ry. Co.* (1857), 26 Ex. 171. See *Hott* v. *Wilkes* (1820), 3 B. & A. 304. The exact rights of a trespasser who is injured do not appear to be clearly defined.

in the same position as volunteers, licensees, or guests; that is, they are expected to take care of themselves against all but latent and extraordinary dangers, or what in some of the cases are called "traps" (*a*). Thus, in *Seymour* v. *Maddox* (*b*), an actor who, while passing from the stage, was injured by falling through a trap door which had been left open unfenced, failed to recover damages against his employer, on the ground that he had suffered from one of the risks of his employment. Persons who go to premises upon the express or implied invitation of the occupier and upon his business are in another category. Their position was defined in *Indermaur* v. *Dames* (*c*). A journeyman gasfitter had been sent by his employer, at the request of the defendant, who was a sugar refiner, to test the action of a gas regulator in the premises of the defendant. While the plaintiff was on the premises, he accidentally, and, as the jury found, without negligence, fell down a shaft which was open and unfenced. Mr. Justice Willes, stating the law with respect to such persons as the plaintiff, said: "We consider it settled law that he (that is, a person going by express or implied invitation upon business concerning the occupier), using reasonable care on his part for his own safety, is entitled to expect that the occupier shall, on his part, use reasonable care to prevent damage from unusual danger, which he knows or ought to know" (*d*).

Owing to the peculiar manner in which the Act is drawn, its effect is not easily ascertained. It does not conduce to lucidity to say in the first section that "workmen" shall be treated as if they were not workmen, without taking account of the fact that "not workmen" include several classes with different rights; to use different language to describe the same thing (*e*); to re-state the Common Law

(*a*) *Southcote* v. *Stanley* (1856), 1 H. & N. 247; *Bolch* v. *Smith* (1862), 31 L. J. Ex. 201; *Gautret* v. *Egerton* (1867), L. R. 2 C. P. 371; *Sullivan* v. *Waters* (1864), 14 Ir. C. L. 460.

(*b*) (1851) 16 Q. B. 326; 20 L. J. Q. B. 327.

(*c*) (1866) L. R. 1 C. P. 274.

(*d*) See also *White* v. *France* (1877), L. R. 2 C. P. D. 308, and *Heaven* v. *Pender* (1882), L. R. 9 Q. B. D. 302; 30 W. R. 749.

(*e*) See sec. 8, and the expressions used in sec. 1 and sec. 5 to denote persons entitled in case of death.

in an Act intended to extend it; to define words not in the Act, and not to define ambiguous phrases which are there (*f*).

But, apparently, the main effect of the Act is this: standing by itself sec. 1, sub.-sec. 1, places a workman in the same position as the plaintiff in *Indermaur* v. *Dames*. This is qualified by sec. 2, sub.-secs. 1 and 3. The effect of the first part of sec. 2, sub.-sec. 1, is, apparently, null. It repeats the Common Law; there being no doubt that, apart from the Act, an employer is liable to servants for injuries caused by defects in machinery, arising from or not discovered or remedied, owing to his own negligence. The second part of sec. 2, sub.-sec. 2, overrules the cases in which employers have been absolved from responsibility for the negligence of their foremen in regard to plant or machinery.

Sec. 2, sub.-sec. 3, introduces a qualification to sec. 1, sub.-sec. 1. *Holmes* v. *Clarke* (*h*), and *Holmes* v. *Worthington* (*i*), show that a servant's knowledge of defects or dangers is not, as a matter of law, an answer to an action against an employer. Sub.-sec. 3 makes such knowledge and failure to communicate within a reasonable time to the employer or "some superior," as a matter of law, an answer to an action under the Act. The alteration made by sec. 1, sub.-sec. 1, of the Act, it is submitted, is not so large as might at first blush seem to be the case. A workman is in no better position than a person who is not a workman, but who is on premises upon invitation; and to rebut the defence of acquiescence it would not suffice for the latter to communicate with "some person superior," but with some one who was the agent of the employer to receive such communications.

Sec. 1, sub-sec. 2, does away with the effect of decisions in which employers have not been made answerable for the

(*f*) See page 665.
(*h*) (1862) 30 L. J. Ex. 135; and 31 L. J. Ex. 356.
(*i*) (1861) 2 F. & F. 533.

negligence of persons in authority and not ordinarily employed in manual labour (*l*).

Sec. 1, sub-sec. 3, alters the Common Law by making the employer answerable for the negligence of those who have not general superintendence, and who may be engaged in manual labour.

Sec. 1, sub-sec. 4, is in itself obscure, and it is made still more so by sec. 2, sub-sec. 2. The first part of the former contemplates the case of A. doing or not doing something in obedience to the rules or bye-laws of the employer B., and C. a workman, being thereby injured. It is conceived that a stranger injured in such circumstances could recover if the injury were the natural consequence of such act or omission. But the statute appends two qualifications to a workman's right of action. The injury must result from some impropriety or defect in the bye-laws—which, however, is, perhaps, only another way of saying that it must be the natural consequence of obedience to the rules or bye-laws. Secondly, a really improper or defective rule or bye-law will, for the purpose of the Act, be proper and not defective if approved or accepted as stated in sec. 2, sub-sec. 2; a proviso which makes the position of the workman under the Act worse than it is at Common Law, for an employer would be answerable for accidents due to defective rules or bye-laws which he had negligently prepared (*n*).

The second part of sec. 1, sub-sec. 4, mentions "particular instructions." This may mean instructions which are a repetition of the orders of the employer; the person delegated being only the mouthpiece of the employer. In this view, it is conceived, the Act merely repeats the Common Law. Or "particular instructions" may mean instructions given by one who is entrusted with authority to use his discretion in giving instructions on a particular occasion; in which case the sub-section apparently only deals with instances of the rule laid down in sec. 1, sub.-sec. 3.

(*l*) See *Wilson* v. *Merry*, L. R. 1 S. & D., p. 338.

(*n*) *Vose* v. *Lancashire & Yorkshire Ry. Co.* (1858), 27 L. J. Ex. 249.

43 & 44 VICT. c. 42.

ARRANGEMENT OF SECTIONS.

Sections.

1. Amendment of law.
2. Exceptions to amendment of law.
3. Limit of sum recoverable as compensation.
4. Limit of time for recovery of compensation.
5. Money payable under penalty to be deducted from compensation under Act.
6. Trial of actions.
7. Mode of serving notice of injury.
8. Definitions.
9. Commencement of Act.
10. Short title.

An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service.

[7*th* September, 1880.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Where after the commencement of this Act personal injury (*o*) is caused to a workman (*p*),

(1.) By reason of any defect (*q*) in the condition of the ways (*r*),

(*o*) Injury to the person of the workman as distinguished from injury to property. It would not include the case of a workman whose tools were destroyed, or, probably, claims by executors for "damage to the estate" of deceased. See *Pulling* v. *Great Eastern Ry. Co.* (1882), 9 Q. B. D. 110 ; 30 W. R. 798.

(*p*) See sec. 8.

(*q*) This is controlled by the words at the end of the section. "As if the workman had not been," &c., and also by sec. 2. See *McGiffin* v. *Palmer's Iron Shipbuilding Co.*, *Times*, Nov. 15, p. 4 (something casually thrown or put upon a tramway not a "defect.") *Huxam* v. *Thoms*, L. T., Jan. 28, 1882, p. 227 (Queen's Bench Division), and the following cases in County Courts : *Langham* v. *Young*, L. T., July 30, 1881, p. 233 ; *Whittaker* v. *Balmforth*, L. T., Sept. 10, 1881, p. 327 ; *Topham* v. *Goodwin*, L. T., Nov. 5, 1881, p. 10.

(*r*) As to meaning of ways, "see *Beaufort* v. *Bates* (1862), 3 De G. F. & J. 381.

works, machinery, or plant (*s*) connected with or used in the business of the employer (*t*) ; or

(2.) By reason of the negligence (*u*) of any person in the service of the employer who has any superintendence entrusted to him (*y*) whilst (*z*) in the exercise of such superintendence ; or

(*s*) In the Railway Act, 1867, 30 & 31 Vict. c. 127, s. 4, "plant" is defined as "the engines, tenders, carriages, trucks, machinery, tools, fittings, materials, and effects constituting the rolling stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or workshops." See also Wharton's Law Lexicon. The phrase "stock in trade" was struck out of the Bill lest farmers should be made responsible for the vice or other defects of their horses. It is, however, by no means certain that in the case of tramways, for example, "plant" would not include horses. See *Blake* v. *Shaw* (1860), Johns. 732, where Page Wood, V.C., thought the term included "horses, locomotives, and the like."

(*t*) The Act contains no definition of "employer." Sec. 8 merely states that it includes "a body of persons corporate or unincorporate." As to spinners who are assisted by "piecers" and "creelers," *Varley* v. *Birley*, *Solicitors' Journal*, May 27, 1882 (p. 467). There must be either a contract of service or a contract personally to execute any work or labour or a contract personally to execute any labour. Consequently a workman employed by a sub-contractor could not sue the contractor. *McGinn* v. *Pilling*, L. T., Dec. 31, 1881 (p. 156) ; nor could a trolley-man occasionally employed by defendants to unload boats : *Lovell* v. *Charrington*, Queen's Bench Division, L. T., March 18, 1882, p. 356.

(*u*) As to what constitutes negligence, see *Scott* v. *London Dock Co.* (1865), 34 L. J. Ex. 220 ; 3 H. & C. 596 ; *Owens* v. *Maudslay*, L. T., Feb. 25, 1882, p. 298 (Divisional Court) ; *Laming* v. *Webb* (County Court), L. T., Feb. 4, 1882, p. 247 ; *McManus* v. *Hay* (1882), 9 R. 425.

(*y*) The descriptions in the Act of persons in authority are numerous. (1.) Any person in the service of the employer who has superintendence entrusted to him (sec. 1, sub.-sec. 2) ; (2.) "Any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform" (sec. 1, sub.-sec. 3) ; "any person delegated with the authority of the employer in that behalf" (sec. 1, sub.-sec. 4) ; "any person in the service of the employer, who has the charge or control of any signal, points," &c. (sec. 1, sub.-sec. 5) ; "some person in the service of the employer and entrusted by him with the duty of seeing that the ways," &c. (sec. 2, sub.-sec. 1) : "some person superior to himself in the service of the employer" (sec. 2, sub.-sec. 3). Sec. 8 defines "a person who has superintendence entrusted to him"—a phrase which, by the way, does not occur in the Act—as "a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour." This definition is, no doubt, intended to apply to sec. 1, sub.-sec. 2. "Any superintendence" is comprehensive enough to include superintendence of machinery as well as men, provided such superintendence does not ordinarily involve manual labour. While the person mentioned in sec. 1, sub.-sec. 2, must be one "whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour" (sec. 8), there is no such limitation as to the persons mentioned in sec. 1, sub.-sec. 3 and 4, and sec. 2, sub.-sec. 1. "Ordinarily," in sec. 8, appears to refer to the duties of the particular man, not to the custom of the trade or the ordinary course of business. See *Boatwright* v. *Downing*, L. T., April 15, 1882, p. 424 ; *Smith* v. *Loftus*, L. T., July 22, 1882, p. 220 ; *Owens* v. *Maudslay* (Q. B. D.), L. T., Feb. 25, 1882, p. 299.

(*z*) It is important to know whether

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform (*a*), and did conform, where such injury resulted from his having so conformed; or

(4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws (*c*) of the employer, or in obedience to particular instructions (*d*) given by any person delegated with the authority of the employer in that behalf (*e*); or

(5.) By reason of the negligence of any person in the service of the employer who has the charge (*f*) or control of any signal, points, locomotive engine, or train (*g*) upon a railway (*h*),

this refers to the time when, or the character or capacity in which, the negligence was committed. Mr. Campbell, in his edition of Fraser's Law of Master and Servant, p. 229, says: "The employer would be liable if a superintendent of a mine negligently allows the miners to smoke and an explosion ensues, but not if the superintendent himself is guilty of the offence." See *Owens* v. *Maudslay*.

This sub-sect. would probably extend to the case of a workman over whom superintendence was not directly exercised.

(*a*) *Laming* v. *Webb*, L. T. Feb. 4, 1882, p. 247. Orders to do something distinctly perilous and hazardous, and out of the scope of a servant's employment, would therefore be outside the Act: *Priestley* v. *Fowler*, 3 M. & W. 1; Addison on Torts, 4th ed. 397.

(*c*) For example, Petroleum Act, 34 & 35 Vict. c. 105, s. 4; Coal Mines Regulation Act, 35 & 36 Vict. c. 76, ss. 51—59; Metalliferous Mines Act, 35 & 36 Vict. c. 77, ss. 23—30; Explosives Act, 38 & 39 Vict. c. 17, ss. 35—37; Alkalis Act, 44 & 45 Vict. c. 37, s. 20.

(*d*) See page 662.

(*e*) See page 662.

(*f*) In *Cox* v. *The Great Western Ry. Co.* (see note (*g*)), the jury found as a fact that H., a "capstan man," in the employment of the defendants —that is, a man, who, by means of a capstan, to which motive power was imparted by a fixed hydraulic engine, could put a train of trucks in motion—was "in charge" of a train. The County Court judge ruled that H. had not "the charge or control;" but the Queen's Bench Division decided that this was wrong.

In *Hayster* v. *The Great Western Ry. Co.*, Dec. 17, 1881, 17 L. T. p. 120, the Queen's Bench Division declined to interfere with a decision of a county court judge, who held the defendants liable for the negligence of a fireman of an engine.

(*g*) A "train" being, to quote Webster's Dictionary, "a continuous line of cars on a railroad," would include a number of carriages without a locomotive. In *Cox* v. *Great Western Ry. Co.* (1882), L. R. 9 Q. B. D. 107; 30 W. R. 816, Mathew, J., said with reference to a contention that a number of trucks placed in a goods station to be unloaded, was not a train, that, in his opinion, a locomotive was not essential.

(*h*) This would, no doubt, include a private railway. It has not yet been decided whether the term includes tramways. As defined in "Webster and Latham's Johnson," it would include a tramway. The objection to this view is that railways and tramways have been dealt with by Parliament in different Acts; that in the General Tramway Act (33 & 34 Vict. c. 78, ss. 25 and 26), "tramway" is used in contrast to railway; that the reference in the sub-section

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death (*i*), shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the ervice of the employer, nor engaged in his work (*i*).

2. A workman shall not be entitled under this Act (*k*) to any right of compensation or remedy against the employer in any of the following cases; that is to say,

(1.) Under sub-section 1 of section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2.) Under sub-section 4 of section 1, unless the injury resulted from some impropriety or defect in the rules, byelaws, or instructions therein mentioned; provided that where a rule or byelaw has been approved or has been accepted as a proper rule or byelaw by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or byelaw (*l*).

(3.) In any case where the workmen know of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence (*m*).

to "locomotive engine," is against this view; and that the legislature obviously intended in the Employers' Liability Act to deal specially with railways (sec. 8).

(*i*) The chief Acts regulating the rights of personal representatives in case of death are to be found in Appendix A. As to the words "as if the workman," &c., see *Griffiths* v. *Dudley*, page 659, *supra*.

(*k*) See page 659. As to the onus of negativing the exceptions in sec. 2, see *Grand Junction Ry. Co.* v. *White* (1841), 8 M. & W. 214.

(*l*) See page 663.

(*m*) The sub-section does not run "unless the employer or such superior already knew," &c., but "unless he (the workman) was aware that the employer or such superior already knew." There is no definition of "superior;" but it is submitted that it does not mean any person superior in the sense of having higher wages.

In *McMonagle* v. *Baird & Co.* (Dec. 17, 1881), 9 R. 364, a miner recovered under the Act for an injury caused by the falling in of the roof of a main roadway. The oversman had caused it to be partially secured, and told the miner to go on with his work. Though not thinking it sufficiently propped, the miner continued to work, in the expectation that more men would return and complete the propping. The Court of Session thought he was entitled to bring an action, although he had continued working with knowledge of the danger. "If there is a known

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury (*n*).

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice (*o*) that injury has

danger which anyone could see, that is one thing. But when he has reported a danger, and his report has been so far acted upon as to have the thing complained of made practically secure, and it has turned out that the oversman was wrong and the place was not secure, it would be a hardship, and it would be oppression to make the man suffer." Lord Justice Clerk.

(*n*) See page 678.

(*o*) Notice is a condition precedent, and no exception is made, except in case of death even where the full effect of the injury is not detected until after the expiration of six weeks. A curious result seems to follow :—If A. is injured and six weeks expire without notice being given, no action is maintainable ; if he subsequently dies, the right of action revives.

In *Moyle* v. *Jenkins* (Dec. 6, 1881), L. R. 8 Q. B. D. 116, 51 L. J. Q. B. 112 ; 30 W. R. 324, it was held that the notice must be in writing, though the employer had arrived on the spot after the accident took place, and had assisted and given money to the plaintiff, and though within six weeks the defendant received a letter written for the plaintiff by the matron of the hospital, in which it was said, "I beg to inform you that it was found necessary to amputate the right arm of Alfred Moyle to-day, and he is getting on as well as can be expected." "The terms of sec. 7," observed Grove, J., "cannot refer to a verbal notice. All the provisions as to service through the post, &c., would be useless if verbal notice would suffice. This is not a question of 'defect or inaccuracy' in the notice. The letter mentioned in the case does not come in any respect within sec. 7, and indeed it was not contended that it did. Then can it be said that sec. 4 contemplated a verbal notice such as a workman saying to his employer, 'I have broken my arm,' when sec. 4 merely refers to the time within which notice must be given, and sec. 7 contains all the requirements of a written notice ? It has been argued that sec. 7 is immaterial if verbal notice is given. But I cannot separate sec. 4 from sec. 7, and thereby make sec. 7 almost if not wholly useless. The Act has, for good reason, required notice to be given, to prevent frivolous actions, and to enable the employer to ascertain whether he is really liable, or whether there has been an injury at all, or whether the claim is fraudulent. The proviso in sec. 4, for dispensing with notice in case of death, seems to show that the case of death is the only one in which notice is not necessary to the maintenance of the action." In the same case, Lopes, J., observed : "A letter was sent in this case, but the learned counsel for the plaintiff rightly admitted that he could not rely on it as a written notice." In *Keen* v. *The Millwall Dock Co.* (March 15, 1882), L. R. 8 Q. B. D. 482 ; 51 L. J. Q. B. 277 ; 46 L. T. N. S. 472 ; 30 W. R. 503, the above decision as to the necessity of a written notice was approved. An accident occurred to the plaintiff on the 31st May, 1881, and a verbal report of it was made the same day by the plaintiff to the defendants' inspector, who took down in writing the details, and afterwards, on the same day, sent a memorandum of them to the superintendent of the defendants. On the 7th June the plaintiff's solicitor wrote to the secretary of the defendants the following letter :—

been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death : Pro-

"*7th June*, 1881.

"SIR,—I am instructed by George Keen, of 136, Rhodeswell Road, Limehouse, to apply to you for compensation for injuries received at your dock, particulars of which have already been communicated to your superintendent. I shall be glad to hear from you on the subject.

"Yours faithfully,

(Signed) "HENRY BRADLEY."

The Court held that this was not a sufficient notice, and nonsuited the plaintiff. A new trial was refused by the Queen's Bench Division. On appeal to the Court of Appeal, Coleridge, C. J., said, with reference to the 7th section, "The words there are apt only to a written notice, and it is clear, I think, that that section cannot be fairly fulfilled, except by the notice being in writing. It has been argued that a notice to satisfy this enactment can be made by a reference in it to some other document. In my opinion it cannot. If the letter relied on in this case had referred to some written document in which the nature and particulars of the injury were given, it would not, I should have thought, have been a compliance with the words of this enactment, which describes the notice as one and single, containing in it the incidents which the statute has required it to contain as a condition precedent to maintaining any action." Brett, L. J., said: "It seems to me that there must be a notice in writing of the injury sustained, that it must be served on the employer, and given within six weeks from the occurrence of the accident, that it must be a notice that injury has been sustained, and must contain certain particulars, such as the cause of the injury, and date at which it was sustained. It must give also the name and address of the person injured, but it need not be signed by any one. However the notice under this Act is not to be deemed invalid by reason of any defect or inaccuracy unless the Judge who tries the action is of opinion that the defendant is prejudiced by it, and that the defect or inaccuracy was for the purpose of misleading. It seems, therefore, to me that a notice might be available even if it should be defective in any of the matters required to be stated, as for instance, if it did not in terms name the day when the injury was sustained, but showed it by reference, so also if it did not describe the cause of the injury with sufficient particularity, but still did not describe it so as to mislead. I agree that as a general rule the notice must be given in one notice, but I am not prepared to say that it would be fatal if it were contained in more than one notice." Holker, L. J., also declined to express an opinion that the notice must be in one document.

In *Stone* v. *Hyde* (April 3, 1882), L. R. 9 Q. B. D. 76; 51 L. J. Q. B. 452; 46 L. T. N. S. 421; 30 W. R. 816, the alleged notice was as follows:—"Mr. Stone, of 193, St. George's Road, Peckham, has consulted me respecting the injuries sustained by him while in your employ on the 19th of November last, and also respecting the improper manner in which he was discharged by you. He is now, and has for some time past been, under medical treatment at Guy's Hospital as out patient, particularly for the injury to his leg, and has been unable to earn anything, and will be so for some time to come.

"I shall be glad to know if you care about your medical man seeing him, and what you propose to do in the matter.

(Signed) "W. H. MATTHEWS."

The County Court Judge held that this was not a sufficient notice, and that the defect was not a "defect" or "inaccuracy" within sec. 7. The Queen's Bench Division, however, took a different view. The County Court Judge "has here found that this defect is such as would prejudice the defend-

vided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice (*p*).

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty (*q*) or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

6.—(1.) Every action for recovery of compensation under this Act shall be brought in a county court, but may upon the application of either plaintiff or defendant, be removed (*r*) into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed (*s*).

(2.) Upon the trial of any such action in a county court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

ant in his defence, and must have been made for the purpose of misleading; but there was no evidence before him at all, so that it is not possible for him to find as a fact that it was for the purpose of misleading."

In *Clarkson* v. *Musgrave* (1882), L. R. 9 Q. B. D. 386; 51 L. J. Q. B. 525, 31 W. R. 47, the notice said that the plaintiff "was injured in consequence of your negligence in leaving a certain hoist in your warehouse unprotected, whereby the said J. C. had her foot caught in the casement of the said hoist." The jury found that the negligence was in allowing the plaintiff to go alone to the hoist; but that there was no negligence in leaving the hoist unprotected. Held a sufficient notice. "The notice is not required to state the cause of action, but only the cause of injury," Cave, J.

In *Adams* v. *Nightingale* (see note (*tt*)) an application for a new trial on the ground that the defendant had been informed of the accident by his own foreman, was refused.

(*p*) In *Macey* v. *Hodson*, L. T., Dec. 24, 1881, p. 140, the County Court Judge held that the fact of the defendant having three times promised compensation, was not a "reasonable excuse." The question what is "reasonable excuse" appears to be left in the discretion of the Judge.

(*q*) For example, 35 & 36 Vict. c. 76, s. 68.

(*r*) *Davidson* v. *Moss*, L. T., April 9, 1881, p. 405.

(*s*) See 9 & 10 Vict. c. 95, s. 90; 19 & 20 Vict. c. 108, s. 38; the applicant must give security which is not to exceed £100. See *Munday* v. *The Thames Iron Works Co.*, W. N. Nov. 18, 1882 (motion for *certiorari* by plaintiff on ground that plaintiff was prosecuting another action for the same cause in a superior Court; application refused).

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

"County court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean the "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

7. Notice in respect of an injury under this Act shall give the name and address (*t*) of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business (*u*); and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of

(*t*) *Briggs* v. *Ross* (1868), L. R. 3 Q. B. 268.

(*u*) In *Adams* v. *Nightingale*, *Law Times*, April 15, 1882, p. 424, the Court were of opinion that a notice had been improperly served which had been left at the defendant's place of business out of business hours, and not in the letter box, but in a wooden box in the yard used by the foreman. The Court laid it down that "a notice under the Act must be delivered in such a manner that it is reasonable to expect that it will come to the defendant's knowledge in the ordinary course of business." See *R.* v. *Freeman of Leicester* (1880), 15 Q. B. 671.

any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

8. For the purposes of this Act, unless the context otherwise requires,—

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour :

The expression "employer" includes a body of persons corporate or unincorporate :

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875 (*x*), applies.

9. This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

10 This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next Session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

The County Court Rules, 1880.

1. These rules may be cited as "The County Court Rules, 1880," or each rule may be cited as if it had been one of "The County Court Rules, 1875," and had been numbered therein by the number of the order and rule placed in the margin opposite each of these rules.

2. An order and rule referred to by number in these rules shall mean the order and rule so numbered in "The County Court Rules, 1875."

(*x*) See part II. ch. XIV. "Workman" includes "woman," 13 & 14 Vict. c. 214. The Employers' Liability Act does not extend to workmen in the service of the Crown, which is not mentioned in it. Maxwell on Statutes," p. 112.

Seamen and apprentices to the sea service were expressly excluded from the operation of the Employers and Workmen Act, 1875, by sec. 13. This was repealed by sec. 11 of the Merchant Seamen (Payment of Wages, &c.) Act, 1880, 43 & 44 Vict. c. 16, s. 11. But section 11 adds, "such repeal shall not, in the absence of any enactment to the contrary, extend to or affect any provision contained in any other Act of Parliament passed, or to be passed, whereby workman is defined by reference to the persons to whom the Employers and Workmen Act, 1875, applies." It follows that seamen are not within the Employers Liability Act.

As regards apprentices, see sec. 12 of Employers and Workmen Act.

Order XXXIX*b*.

The Employers' Liability Act, 1880.

Service of Summons.

13. A summons in an action brought under the provisions of the Employers' Liability Act, 1880, where it is to be served in the home district, shall be delivered to the bailiff thirty-two clear days at least, and where it is to be served in a foreign district, thirty-five clear days before the return day, but it shall in either case be served thirty clear days before the return day thereof.

14. Particulars of demand shall be filed by the plaintiff at the time of the entry of the plaint, whatever the amount claimed may be; and a copy thereof shall be forthwith sent to the judge.

15. The particulars of demand shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed, and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff, and where the injury of which the plaintiff complains shall have arisen by reason of the act or omission of any person in the service of the defendant, the particulars shall give the name and description of such person.

Jury.

16. Notice of a demand for a jury shall be given in writing to the registrar of the Court fifteen clear days at least before the return day, and the summonses to the intended jurors shall be delivered to the bailiff forthwith.

Assessors.

17. Any person who shall, as hereinafter provided, be appointed by the judge to act as an assessor in the action, shall be qualified so to act.

18. Where no demand for a jury shall have been made, a party who desires assessors to be appointed shall, ten clear days at least before the return day, file an application according to the form in the schedule, stating the number of assessors he proposes to be appointed, and the names, addresses, and occupations of the persons who may have expressed their willingness in writing to act as assessors. If the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

19. Where the application for the appointment of assessors has been made by one party to an action only, the registrar shall forward the application so made to the other party who may then either file an application for assessors, or file objections to one or more of the persons proposed.

20. Where separate applications are filed by the parties, no objection to the persons proposed shall be made by either party, but the judge may appoint from the persons named in each application one or more assessor or assessors, provided that the same number of assessors be appointed from the names given in such applications respectively.

21. The applications for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the registrar to the judge.

22. Where the judge shall grant the application for the appointment of assessors he shall appoint such of the persons proposed for assessors as he may think fit, subject to the provisions hereinbefore or hereinafter contained in this order.

23. In any action where no demand for a jury has been made, and an application for the appointment of assessors has been filed, the judge may, either before or at the return day, nominate one or more additional persons to act as assessor or assessors in the action. Where no application for assessors has been made, the judge may, if he think fit, appoint any one or more persons to act as assessor or assessors in the action before or at the return day.

24. If at the time and place appointed for the trial all or any of the assessors appointed shall not attend, the judge may either proceed to try the action with the assistance of such of the assessors, if any, as shall attend, or he may adjourn the trial generally, or upon any terms which he may think fit, or he may appoint any person who may be available and who is willing to act, and who is not objected to or who if objected to is objected to on some insufficient ground, or the judge may try the action without assessors if he shall think fit.

25. Every person nominated as an assessor shall receive for each day's attendance in every action the sum of two guineas, together with such further sum, if any, for his expenses as the judge may order.

26. Every person requiring the judge to be assisted by assessors shall at the time of filing his application deposit with the registrar the sum of two guineas for each assessor proposed, and such payments shall be considered as costs in the action, unless otherwise ordered by the judge. Provided that where a person proposed as an assessor shall have in writing informed the registrar that he does not require his remuneration to be so deposited, no deposit in respect of such person shall be required.

27. Where an action shall be tried by the judge with the assistance of any assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the judge shall direct.

28. If after an assessor has been appointed the action shall not be tried, the judge shall have power to make an allowance to him in respect of any expense or trouble which he may have incurred by reason of his appointment, and direct the payment to be made out of the sum deposited for his remuneration.

29. The assessors shall sit in Court with the judge, and assist (*a*) him when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff shall be entitled to recover.

Consolidation of Actions or Stay of Proceedings.

30. Where several actions shall be brought under this Act against a defendant in the same Court in respect of the same negligence, act or omission, the defendant shall be at liberty to apply to the judge that the said actions shall be consolidated.

31. Applications for consolidation of actions shall be made upon notice to the plaintiffs affected by such consolidation.

32. In case several actions shall be brought under this Act against a defendant in the same Court in respect of the same negligence, act, or omission, the defendant may, on filing an undertaking to be bound so far as his liability for such negligence, act, or omission is concerned by the decision in such one of the said actions as may be selected by the judge, apply to the judge for an order to stay the proceedings in the actions other than in the one so selected, until judgment is given in such selected action.

33. Applications for stay of proceedings shall be made upon notice to the plaintiffs affected by stay of proceedings or *ex parte*.

34. Upon the hearing of any application for consolidation of actions or for stay of proceedings, the judge shall have power to impose such terms and conditions and make such Order in the matter as may be just.

35. If any Order shall be made by a judge upon an *ex parte* application to stay proceedings, it shall be competent to the plaintiffs affected by such Order to apply to the judge, upon notice or *ex parte*, to vary or discharge the Order so made, and upon such last-mentioned application such Order shall be made as the judge shall think fit, and the judge shall have power to dispose of the costs occasioned by such Order or Orders as he may deem right.

36. In case a verdict in the selected action shall be given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their damages and costs.

37. A defendant may admit the truth in the plaintiff's particulars in the actions of any statement of his liability for such negligence, act, or omission, and thereupon the provisions of Order XII. r. 3, shall apply.

Where two or more persons are joined as plaintiffs under Order V. r. 1, and the negligence, act, or omission which is the cause of action shall be proved, the judgment shall be for all the plaintiffs, but the

(*a*) See sec. 6 (2).

amount of compensation, if any, that each plaintiff is entitled to shall be separately found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the Court may think fit.

Should the defendant fail to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action; and should the proceeds of the execution be insufficient, after deducting all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount which shall have been awarded to the respective plaintiffs to the total amount realised after the deduction of all the costs of the action as aforesaid.

SCHEDULE.

Application for Assessors.

The Employers' Liability Act, 1880.

In the County Court of holden at

Between Plaintiff.

Defendant.

The plaintiff [*or* defendant] applies to have an assessor [or assessors] appointed to assist the Court in ascertaining the amount of compensation to be awarded to the plaintiff, should the judgment be in his favour; and he submits the names of the following persons, who have expressed their willingness in writing to act as assessors, should they be appointed.

(*Here set out the names, addresses, and occupations of the persons above referred to.*)

* The defendant [*or* plaintiff] consents to the appointment of any of the persons above named to act as assessors in this action, as appears by his consent thereto filed herewith.

Plaintiff [*or* Defendant].

Appointment by Judge.

I appoint

E. F.

G. H.

to be assessors in this action.

Judge.

* Where the other party does not consent, or where the other party has filed an application for the appointment of assessors, strike this paragraph out.

We, John Bury Dasent, Rupert Alfred Kettle, Alfred Martineau, Henry J. Stonor, and James Mótteram, being Judges of County Courts appointed to frame Rules and Orders for regulating the Practice of the Courts and Forms of Proceedings therein, under the 32nd section of the County Courts Act, 1856, have by virtue of the powers vested in us thereby, and of all other powers enabling us in this behalf, framed the foregoing Rules and Forms, and we do hereby certify the same to the Lord Chancellor accordingly.

J. B. Dasent.
Rupert Kettle.
A. Martineau.
H. J. Stonor.
J. Motteram.

I approve of these Rules and Forms to come into force in all County Courts on the 1st day of January, 1881.

27*th December*, 1880. Selborne, C.

APPENDIX A.

9 & 10 VICT. c. 93 (1846).

"*An Act for compensating the Families of Persons killed by Accidents.*"

Section 1 enacts "That whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been under such circumstances as amount in law to felony."

Section 2: "That every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased, and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom

and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered, from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct."

Section 5 enacts "That the word 'parent' shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word 'child' shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter."

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27 & 28 VICT. c. 95 (1864).

"*An Act to amend the Act* 9 & 10 *Vict. c.* 93, *for compensating the Families of Persons killed by accident.*"

Section 1 enacts "That if there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought," "such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator."

An illegitimate child is not within these statutes, *Dickinson* v. *North-Eastern Ry. Co.* (1863), 33 L. J. Ex. 91; but a child *en ventre sa mère* is within them, *The George and Richard* (1871), L. R. 3 A. & E. 466.

Compensation under these Acts ought not to include compensation for wounded feelings, funeral expenses, family mourning, *Blake* v. *Midland Ry. Co.* (1852), 21 L. J. Q. B. 233; 18 Q. B. 93; *Dalton* v. *South-Eastern Ry. Co.* (1858), 4 C. B. N. S. 296; 27 L. J. C. P. 227; *Phillips* v. *London and South-Western Ry. Co.* (1879), L. R. 5 C. P. D. 280; 49 L. J. Q. B. 233; *Pym* v. *Great-Northern Ry. Co.* (1862), 31 L. J. Q. B. 249; 32 L. J. Q. B. 377; 4 B. & S. 396; 8 L. T. 734; 11 W. R. 922. In *Phillips* v. *London and South-Western Ry. Co.*, Bramwell, L. J., thus indicated the manner in which damages to a working man should be estimated:—"I may take the common case of a labourer receiving an injury, which has kept him out of work for perhaps six months; his evidence may be that before the time of the accident he was earning twenty-five shillings a week, that during twenty-six weeks he has been wholly incapacitated for work, that for ten weeks afterwards he has been able to earn only ten shillings a week, and that he will not get into full work again for

twenty weeks. The plaintiff will be entitled to twenty-five shillings for each of the twenty-six weeks, and to fifteen shillings for each of the ten and twenty weeks. He is also entitled to some amount for his bodily sufferings, and for his medical expenses; and in this manner the compensation to be awarded to him is estimated. I have put a case where a definite term may be fixed upon within which the party injured will recover; but suppose a case in which no definite term can be fixed: in that case the direction to the jury is that they must consider for themselves how long the plaintiff will be incapacitated from earning his livelihood, or from practising his profession, but that they must take into account the chance of his losing employment if he had not met with the accident."

A parent who sues in respect of the death of a child, must produce evidence of pecuniary benefit from the child's labour; *Duckworth* v. *Johnson* (1859), 4 H. & N. 653; 29 L. J. Ex. 25; *Condon* v. *Great Southern and Western Rail. Co.* (1865), 16 Ir. C. L. 415; *Sykes* v. *North Eastern Rail. Co.* (1875), 44 L. J. C. P. 191. In *Hetherington* v. *North Eastern Rail. Co.* (1882, L. R. 9 Q. B. D. 160), which was an action under the Employers' Liability Act by the father of a deceased servant of the company, the evidence was that his son used to contribute to his support; that five or six years ago when he was out of work his son helped him; but that he had not done so since. The Queen's Bench Division, disagreeing with the ruling of the County Court judge, decided that there was such a reasonable expectation of pecuniary advantage to the father by his son's life, to justify the case going to a jury.

Compensation to an injured workman ought not to be reduced by the amount of insurance money received by him, but such a deduction ought to be made when his representatives sue; *Bradburn* v. *Great Western Rail. Co.* (1874), L. R. 10 Ex. 1; 44 L. J. Ex. 9; 31 L. T. 464; 23 W. R. 48; *Gillard* v. *Lancashire and Yorkshire Rail. Co.* (1848), 356. As to the rights of executors, see *Bradshaw* v. *Lancashire and Yorkshire Rail. Co.* (1875), L. R. 10 C. P. 189; and *Leggott* v. *Great Northern Rail. Co.* (1876), 599.

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